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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. ~~547~~ 103

JOHN JAMES JACKSON, WILLIAM A. WILSON, CHRISTOPHER R. SHOTTON, ET AL., PETITIONERS,

vs.

STEAMSHIP "ARCHIMEDES," LAMPORT & HOLT LINE, LTD., CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 2, 1926

CERTIORARI GRANTED OCTOBER 25, 1926

(32,114)

(32,114)

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

JOHN JAMES JACKSON et al., Libelants-Appellant,

against

Steamship "ARCHIMEDES," LAMPORT & HOLT LINE, LTD., Claimants-Respondents

Writ of Error to the District Court of the United States for the Southern District of New York

Transcript of Record—Filed Jan. 30, 1926

[fol. 1] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

JOHN JAMES JACKSON et al., Libelants,

against

Steamship "ARCHIMEDES," LAMPORT & HOLT, LTD., Claimant

STATEMENT OF CASE

Filed libel July 27, 1922.

Filed claim and stipulation for costs and value.

July 27, 1922, filed answer.

June 10, 1925, case called and tried before Hon. Augustus N. Hand, D. J.

July 29, 1925, opinion filed dismissing libel with costs.

September 30, 1925, final decree filed dismissing libel with $61.60 costs.

December 15, 1925, filed notice of appeal and asignments of error.

[fol. 2] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

SIRS: Please take notice that the above named libelant hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the decree of the United States District Court for the Southern District of New York, heretofore entered herein on or about the 30th day of September, 1925, dismissing the libel herein; and the libelant appeals from each and every part of said decree, as well as from the whole thereof.

Yours, etc., Silas B. Axtell, Proctor for Libelant. Office & P. O. address: 11 Moore Street, New York City.

Dated New York City, N. Y., December 14th, 1925.

Burlingham, Veeder, Masten & Fearey, Proctors for Claimant. Office & P. O. Address: 27 William Street, New York, N. Y.

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

The libelant for his assignment of errors which he alleges were committed by the District Court herein, respectfully shows:

1. That the court erred in holding that Section #11 of the Seamen's Act of March 4, 1915, as amended by the Jones Act of June 5, 1920, did apply to wages paid on a foreign ship in advance of the time earned.

2. That the court erred in holding that Section #11 of the Seamen's Act of March 4, 1915, as amended by the act of June 5, 1920, known as the Jones Act does not apply or did not apply to the facts in this case, this being a suit where the court properly took jurisdiction to enforce a demand for half wages made by the libelants under the provisions of Sec. 4530 U. S. Revised Statutes.

3. That the court erred in holding that the Law of Great Britain was exclusively applicable to advances made on a [fol. 4] British vessel in a British port where she had come in the United States for the purpose of trade and the court had taken jurisdiction in Admiralty of the vessel upon a libel which alleged that a demand for half wages had been made upon the master of the vessel while she was within the United States and within the jurisdiction of this court for the purpose of discharging and loading cargo and under circumstances that made Sec. 4530 of the U. S. Revised Statutes applicable.

4. That the court erred in dismissing the libel.

5. That the court erred in refusing to hold the vessel liable for the libelants' claim for wages and in refusing to assess libelants' claim for waiting time under the provisions of 4529 of the U. S. Revised Statutes.

Silas B. Axtell, Proctor for Libelant-Appellant.

Office & P. O. Address: 11 Moore Street, New York, N. Y.

[fol. 5] IN UNITED STATES DISTRICT COURT

LIBEL

To the Honorable Judges of the United States District Court for the Southern District of New York, in Admiralty:

The libel of John James Jackson and four others in a cause of action, civil and maritime, for wages and for waiting time against the S. S. Archimedes, respectfully alleges:

Action under special rule for seamen to sue without security or prepayment of fees for the enforcement of the laws of the United States, common and statutory, for the protection of the health and safety of seamen at sea.

First. That the S. S. Archimedes is now within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Second. That on or about the 19th of May, 1922, libelants whose names are hereinafter set forth, signed regular British merchant shipping articles, at the port of Manchester, England, for a voyage to the United States and return, for a period not exceeding two years, at the respective rates of wages and in the respective capacities hereinafter set forth.

[fol. 6] Third. That thereafter the said S. S. Archimedes arrived at the port of New York for the purpose of loading and/or delivering cargo, and five days thereafter, libelants duly demanded one-half the amount due them for wages actually earned, from the master of said steamship, and the said master failed and neglected to comply with said demand.

Fourth. That by reason of said failure to comply with said demand, libelants are entitled to full payment of all the wages earned, the amounts of which are hereinafter set forth opposite the names of the libelants.

Fifth. That by reason of said failure to pay, libelants are entitled to a sum equal to two days pay for each and every day during which payment is withheld beyond the 8th of June, 1922, the date upon which demand for half wages was made.

Sixth. The names of the libelants, the respective capacities in which they signed the shipping articles, the respective rate of wages at which they signed, the amounts which became due by reason of the failure to comply with the half wages demand, are hereinafter set forth as follows:

Names	Capacity	Rate of wages	Due
William A. Wilson	A. B.	£10	£5, 2s, 9d
John James Jackson	A. B.	£10	£6, 10s
Christopher R. Shotton	A. B. & Q. M.	£10, 10s	£6, 11s
William Lewis	A. B.	£10	£6, 1s
Thomas W. Hooper	A. B & Q. M.	£10, 10s	£5, 9s, 9d

[fol. 7] Seventh. That all and singular the foregoing premises are true and within the maritime and admiralty jurisdiction of the United States and of this honorable court.

Wherefore libelants pray that process in due form of law, according to the course of this honorable court, in causes of admiralty and maritime jurisdiction may issue against the S. S. Archimedes and that all persons claiming any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid and that this honorable court may be pleased to decree the payment of your libelants' claim in the sum of $155.00 and that the said vessel may be sold and condemned to pay the same, and waiting time as prayed for and the libelants have such other and further relief as may be just and proper.

Silas B. Axtell, Proctor for Libelants.

Office and P. O. address: 11 Moore Street, New York City.

Duly sworn to by John James Jackson et al. Jurat omitted in printing.

[fol. 8] IN UNITED STATES DISTRICT COURT

ANSWER

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Lamport & Holt, Ltd., claimant of the steamship Archimedes, as the same is proceeded against on the libel of John James Jackson and others in an alleged cause of action for wages and waiting time, civil and maritime, alleges as follows:

First. The claimant admits the allegation of the first article of the libel.

Second. It admits the allegations of the second article [fol. 9] of the libel, except that it denies that the libellants Christopher R. Shotton and Thomas W. Hooper signed in the capacities and at the rate of wages set forth in the libel.

Third. It admits that the steamship Archimedes thereafter arrived at New York for the purpose of loading and delivering cargo, but it denies the other allegations of the third article of the libel.

Fourth. It denies the allegations of the fourth article of the libel.

Fifth. It denies the allegation of the fifth article of the libel.

Sixth. It admits that the libellants John James Jackson, William A. Wilson and William Lewis signed the shipping articles in the respective capacities and at the rate of wages set forth in the libel, but it denies the other allegations of the sixth article of the libel.

Seventh. It admits the jurisdiction and denies the other allegation of the seventh article of the libel.

Eighth. Further answering, the claimant alleges that on or about May 19, 1922, at Manchester, England, the libellants, British subjects, signed regular shipping articles before the British Shipping master for a round voyage from Manchester to New York on the Archimedes, a British [fol. 10] steamer flying the British flag. Said contract was a British contract and libellants by entering into the service of said British steamer subjected themselves to the British law and their rights are governed thereby. The Archimedes sailed on said voyage and arrived at New York, June 1, 1922. On June 3 each of the libellants demanded and received from the master of said steamer wages in excess of one-half part of the balance of his wages then earned and remaining unpaid.

Notwithstanding demand and payment as aforesaid, each of the libellants at 10.15 p. m. June 8, while said steamer still lay at New York, made a second demand on the master for wages, each libellant demanding an amount exceeding one-half part of the balance of his wages then earned and remaining unpaid. Previous to said demand the libellants had packed up their belongings and had prepared to leave the steamer. Said demand was illegal and made in bad faith, and on refusal by the master to comply therewith the libellants, without leave, wrongfully quit the ship and failed and neglected to return and became deserters and were duly declared to be such by the master. By reason of the premises the libellants forfeited all wages and all claims whatsoever against said steamer and/or the claimant.

Wherefore claimant prays that the libel herein be dismissed with costs.

Burlingham, Veeder, Master & Fearey, Proctors for Claimant.

[fol. 11] *Duly sworn to by Alfred H. Lloyd. Jurat omitted in printing.*

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence

New York, June 10, 1925.

APPEARANCES OF COUNSEL

Silas B. Axtell, Esq., for libelant.
Messrs. Burlingham, Veeder, Masten & Fearey (Mr. Dean) for claimant.

The claims of the libel and answer are stated.

OFFERS IN EVIDENCE

Mr. Axtell: I offer in evidence the depositions of: William A. Wilson, Christopher R. Shotten, William Lewis, Thomas A. Hooper, and John James Jackson.

Mr. Dean: I offer in evidence the depositions of: George Blacker, master of the Archimedes, and the deposition of John Cusick, the boatswain of the Archimedes, together with the exhibits offered in evidence when those depositions were taken.

Mr. Dean: Will Mr. Axtell concede that at the time the libelants signed these shipping articles the practice of pay-[fol. 13] ing advances to a seaman was usual and customary, and not forbidden by the laws of Great Britain?

Mr. Axtell: Yes.

Mr. Dean: I wish to read into the record part of section 221 of the British Merchant Shipping Act of 1894, as follows:

"If a seaman lawfully engaged or an apprentice to the sea service, commits any of the following offences he shall be liable to be punished summarily as follows:

(A) If he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part

of the effects he leaves on board, and of the wages which he has then earned."

The Court: I will consider the matter.

TESTIMONY

[Title omitted]

Testimony of William A. Wilson, Thomas W. Hooper, John James Jackson, Christopher R. Shooton, William Lewis, taken on behalf of themselves, before Anna [fol. 14] Kiefer, a notary public, at the office of Silas B. Axtell, 11 Moore Street, New York City, on the 16th of June, 1922

Appearances: Silas B. Axtell for libellants; Burlingham, Veeder, Masten & Feary for respondent (Mr. Dean, of counsel).

Signing, certification and filing of minutes is hereby waived, same to be taxable as costs.

All objections reserved until the trial except as to form of questions and answers.

NOTICE OF TAKING DEPOSITIONS

[Title omitted]

Please take notice that the testimony of John James Jackson, William A. Wilson, C. R. Shotton, William Lewis, Thomas W. Hooper, witnesses on behalf of themselves herein will be taken by deposition de bene esse, pursuant to [fol. 15] Section 863 and 864 of the Revised Statutes of the United States and the Acts of Congress amendatory thereof and supplementary thereto, before Anna Kiefer, Notary Public or before some other officer authorized by law to take depositions at 11 Moore St. Borough of Manhattan, City of New York on the 12th day of June, 1922 at 4 o'clock P. M. That said testimony is taken because said witness

is a seaman and is leaving or intending to leave the jurisdiction of this court.

Silas B. Axtell, Proctor for Libelants, 11 Moore St., New York, N. Y.

Dated June 9th, 1922.

Lamport & Holt Line, Ltd., Proctor for Respondent, 42 Broadway, New York City.

WILLIAM A. WILSON, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. You are one of the libelants?

Mr. Dean states that the other men ought to stay out of the room while this man testifies. Mr. Axtell responds that these men are all parties to the action and have a right to be present, but if he desires them to be removed, he will ask them to step out.

[fol. 16] Q. You are one of the parties to this action. We call them libelants?

A. Yes.

Q. How old are you?

A. 19.

Q. Where were you born?

A. London.

Q. Your home is in England?

A. Yes.

Q. Where is it now?

A. West Street, 507 West Street.

Q. Are you going to stay over here in this country?

A. Yes.

Q. What were you on the Archimedes?

A. A. B.

Q. Where did you sign?

A. Manchester.

Q. At what rate?

A. Ten pounds a month.

Q. No bonus?

A. No.

Q. What date did you sign?

A. I cannot be certain of that.

Q. Have you any memorandum or paper to remind you or refreshen your recollection?

A. It was the 19th of May, 1922.

Q. Did you get any advance on joining?

A. Two pounds.

Q. To whose order was the advance note made?

A. Thompson. Trafford Road, Manchester.

Q. Who is he?

A. He deals in clothes for sailors.

Q. You got the two pounds before you earned it or after?

A. Before.

Q. Had you done any work at the time you got the £2?

A. No.

Q. You went on the ship and continued up to what time?

A. Up until half past ten on the 8th of June.

[fol. 17] Q. What happened then?

A. We went to the captain and made a demand for half pay and handed him these slips.

Q. Have you got a slip with you?

A. Yes.

Q. Is that your signature on that?

A. Yes.

Q. Did you hand this to the master?

A. Yes.

Q. What did he say?

A. He would not have anything to do with it. He said nothing. He just put it aside.

Q. Will you just relate what you said to him exactly or what anybody else said in your presence about half wages.

A. In the first place; we all walked in the saloon and saw the captain alone.

Q. Who are all?

A. Lewis, myself, Shotton, Hooper, Jackson. Lewis told the captain that we wanted some more money. He said that he had already given us money and he would not give

it again so we handed him those notes and demanded half pay. Well, he refused to have anything to do with it at all.

Q. Did he say anything?

A. He just said that — was giving no more money out.

Q. Did he read the advance note?

A. He looked at Lewis's note and gave it back to him.

Q. Do you know whether he read it?

A. He had it in his hand reading it.

Q. How long did he have it in his hand?

A. A matter of a few seconds.

Q. Did he look at it?

A. Yes.

Q. You could see that his eyes were focused on the note?

A. Yes.

Q. What did he do or say?

[fol. 18] A. He just handed the note back and said he was giving no more money and would have nothing to do with it and then we each offered the notes and he just waved them aside.

Q. You all did that?

A. Yes. Then, I showed him this paper and asked him if he would listen to it while I read it.

Q. Will you read what you read to the captain?

To whom it May Concern:

This is to certify that under the laws of the United States, a seaman on foreign vessels while in the waters of the United States, for the purposes of loading or discharging cargo, may demand and receive half wages due and unpaid. If the demand is refused the contract is ended and the seaman may leave the vessel without interference, taking all of his belongings with him including his passport, discharge books and other things. The act is binding as the law of the place where the demand is made and is not governed by any foreign law as all treaties with foreign countries have been rescinded by the United States.

A. I read as far as there and he stopped me. He said, that was only the American law for American ships. That has nothing to do with British ships. Then Lewis asked him for a pass for our bags.

Q. What did he say?

A. He said he would not give us them and then he turned his back on us and walked away.

[fol. 19] Q. Did you work regularly from May 19th to June 8th?

A. Yes.

Q. Did you draw any cash after you left England; that is money that you had already earned?

A. I did. 10 shillings in tobacco and $6.00 cash.

Q. How much is 10 shillings; half a pound I suppose?

A. I cannot say exactly. It would be about 2.25.

Q. Exchange 4.50?

A. Yes.

Q. Then $8.25 is the sum that you had received in cash besides your advance note?

A. Yes.

Q. How much balance of wages did you figure was the total sum owing to you at the time you made the demand for half wages?

A. Not counting the advance, £3, 18s.

Q. That is the total or half?

A. That is the total, not counting the advance.

Q. Did you get your bag off the ship?

A. Yes, after a bit of trouble. We took them ashore that night at half past ten but we could not get them out of the gates because the Customs would not pass them.

Q. Why?

A. Because the Customs evidently don't pass bags after a certain time or something.

Q. Did you get them out later?

A. We took them back aboard that night.

Q. Did you stay aboard that night?

A. We stayed aboard and we brought our bags ashore in the morning, eight o'clock.

Q. Did you get your discharges?

A. No.

Q. Where are those discharges?

A. I should say at the Consul's office.

[fol. 20] Q. Where did you leave them?

A. On the ship.

Q. In whose possession?

A. The captain.

Q. Did you demand them before you left the ship?
A. No.
Q. Was subsequently a written demand made in your behalf, that you know of?
A. Yes.
Q. Have you received them since?
A. No.
Q. Is it possible for you to find employment as a seaman without your discharge books?
A. I should say not. Not at present.
Q. Are you looking for employment as a seaman?
A. No.
Q. Are you at present employed?
A. Yes.
Q. What doing?
A. Working for some painting company.
Q. Will you go to sea as soon as you get your discharge books?
A. Yes.
Q. You intend to go on American or British ships?
A. American.
Q. You intend to take out your papers?
A. Yes.
Q. That is your intention papers?
A. Yes.
Q. Did you load or discharge any cargo here?
A. Yes.
Q. Which?
A. Both discharge and load.
Q. Where is the vessel going from here?
A. Manchester.
Q. When did she sail?
A. Last Saturday.

Cross-examination.

By Mr. Dean:

Q. When did the Archimedes arrive here?
A. I cannot say what date it was.
[fol. 21] Q. How long had she been in port before you made the demand on the master?
A. Six days. Either six or seven. I cannot be certain.

Q. How long after you signed articles before you were on the ship and commenced working?

A. Two days. Not a full two days.

Q. Then you commenced work on the 21st?

A. Yes.

Q. I understood you to say that you got $6.00 cash on account of wages after you arrived at New York?

A. Yes.

Q. How long is that after the ship arrived?

A. Two days.

Q. Were you paid in dollars or pounds?

A. Dollars.

Q. Did you ask for any more money at the time you were paid?

A. No.

Q. What was you- slope account?

A. Ten shillings, tobacco.

Q. I note on Plaintiff's Exhibit I, that you have £2, 9s or equivalent. How did you arrive at £2, 9s? Tell me in your own words how you figure it that £2, 9s was half pay.

A. Well, there was three weeks aboard the ship, 6 and 8 a day. That was £3, 6s a week. That is £10 for the three weeks; deduct $6 and 10s.

Q. You did not deduct the advance?

A. No.

Q. Why?

A. Because I could make that demand and not count the advance in. The advance is void in this country.

Q. You figure that you worked three weeks and you say that amounted to £10.

A. Yes.

Q. I thought you signed on at wages at £10 a month?

A. Yes.

[fol. 22] Q. Then 3 weeks would not be £10, would it.

A. I just made a mistake. It should have been £7.

Q. Then you calculate that you had earned £7 up to June 8th?

A. Yes.

Q. Who gave you this slip marked Plaintiff's Exhibit 1?

A. Mr. Axtell.

Q. Who prepared the statement, part of which you read to the master at the time you made the demand?

A. Mr. Axtell.

By Mr. Axtell: These men came in for advice and said that the captain would not give them any money and I told them they had better ask for half wages. They already knew something about half wages and I thought the master might not, so I wrote this letter so that they could show it to him so that he would understand and be apprised fully of the nature of the law.

By Mr. Dean:

Q. Did you, yourself come down to see Mr. Axtell to find out what your rights were?

A. Yes.

Q. On what date, did you come down?

A. 8th of June.

Q. On how many occasions did you make a demand on the master for half pay?

A. Just once.

Q. Was that before or after you came down to Mr. Axtell's office?

A. After.

Q. What was the occasion of coming to his office?

[fol. 23] A. Well, we all wanted some more money. We had already $6.

Q. I understood you to say that you did not ask for any more than $6, at the time you got the six dollars?

A. Yes, but we wanted some more later on.

Q. When later on, did you ask for more money?

A. We did not ask for any more because on the previous trip we had gone up twice to the captain for money and he told us never to come up again.

Q. On the second occasion?

A. On the previous trip on the same ship.

Q. Did you leave the ship on the 8th?

A. On the 9th, the morning of the 9th.

Q. Did you get permission from the master to leave?

A. No.

Q. You took the baggage off, intending not to go back to the ship?

A. Yes.

Q. Did you make any complaints to the British Consul about your difficulty?

A. No.

Q. Have you seen the British Consul since the ship came into port?

A. No.

Q. Did you do any work at all on the 8th?

A. Yes, worked all day on the 8th.

Q. How did you get out to Mr. Axtell's office. What time?

A. We worked half a day and we go on the other half.

[fol. 24] THOMAS HOOPER, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?

A. Thomas Hooper.

Q. How old are you?

A. 33.

Q. You are an Englishman?

A. Yes.

Q. Where is your home?

A. Manchester.

Q. You came over on the Archimedes?

A. Yes.

Q. When did you join?

A. The 17th.

Q. What rate of wages and what capacity?

A. £10, 10s. A. B. seaman and quartermaster.

Q. Did you get any advance on joining?

A. Yes, £4.

Q. Was that in the form of a note?

A. Yes.

Q. Whose order?

A. Sister.

Q. What was the form of the note. To whose order was the note drawn? If it was to your sister, it's a valid payment. Was it to your sister?

A. It was to myself.

Q. If you don't know, say so?

A. The note was payable to Thomas William Hooper.

Q. As part wages?

A. Yes.

Q. Where did you cash it?

A. I did not cash it. I gave it to my sister. Endorsed it to my sister.

Q. Why did you not take an allotment?

A. Because, I am single, not married. I am not required to leave any allotment.

Q. Your sister actually got this money?

A. I could not swear to that.

[fol. 25] Q. You gave it to her?

A. Yes.

Q. Well, did you draw any cash money after the voyage commenced?

A. I drew money on this side.

Q. How much?

A. $6.00.

Q. When did you ever make any demand for half wages?

A. On the 8th of June.

Q. What took place, where did it happen and what was said?

A. We went up and asked the captain if he would give any sub.

Q. What does that mean?

A. Another draw or payment.

Q. That is an expression that means draw on account of wages?

A. Yes.

Q. What else did you say to him?

A. Well, he refused and I turned around to him. I said, well, will you give me half of what is due me and he said "No, I won't give you a cent."

Q. Anybody else present at the time?

A. Yes, there was four of them or five rather.

Q. Who were?

A. Shotten, Wilson, Jackson and Lewis. The other fellow left the ship.

Q. Did they say anything to the captain at this time?

A. Yes, they said the same as myself.

Q. They wanted half pay?

A. Yes.

Q. How much money did you have coming to you at the time you demanded these half wages?

A. I figure it £2, 15s. 3d.

Q. That is what you figure was due you?

A. Yes.

Q. Is that counting in advance?

A. Not counting the advance.

[fol. 26] Q. Did you join the ship on May 19th, the same day as the other man?

A. Yes.

Q. May 19th to June 8th is how many days?

A. 21 days.

Q. At £10 a month, how much is that?

A. £7, 7s.

Q. And you had drawn $6.00? About $31.50 you had earned?

A. Yes.

Q. At the time you demanded half wages?

A. Yes.

Q. You had drawn $6.00 of that?

A. Yes.

Q. Which would leave $25.50?

A. Yes.

Q. And if you did not count the advance then, you would have half wages due you of $12.25?

A. Yes.

Q. I would like Mr. Axtell to state what the rate of exchange is.

A. About 4.50.

Q. Do you know the exchange that prevailed at that time?

A. No, could not say. Between 4.45 and 4.50 I think.

By Mr. Axtell:

Q. Did you get your clothes?

A. Yes, I got them.

Q. Did you get your discharge book?

A. No, I did not.

Q. Did you ask for it?

A. I asked for it but they would not give it to me.

Q. Who?

A. The captain.
Q. When?
A. The same night when he refused to give me the book. I said, give me the book and I will go ashore.
Q. What did he say?
A. He said, I will have nothing to do with you.
[fol. 27] Q. When you asked him for your discharge book, what did he reply?
A. He said I could not have it.
Q. Do you know where it is now?
A. No.
Q. When did you last see it?
A. I last saw it on the 17th of June. When I signed on the ship, I gave it to him.
Q. To who?
A. The Captain.
Q. Have you seen it since you gave it to the captain?
A. No, I have not seen it.
Q. Are you going to stay in this country or are you going back to England?
A. I am going to stay in this country.
Q. Are you going to continue going to sea?
A. Yes.
Q. What kind of ships?
A. American.
Q. Are you going to get your papers?
A. I haven't got them yet.
Q. Have you any intention on the subject?
A. Yes, I will get my papers at the first opportunity.

Cross-examination.

By Mr. Dean:

Q. How long have you been going to sea.
A. Twenty years on these ships.
Q. British ships all the time?
A. Yes.
Q. When did you decide to become an American seaman?
A. Only this voyage. I got fed up with sailing on English ships.
Q. Did you owe the ship anything for slops at the time you left?

A. Yes, ten shilling tobacco.

Q. Have you heard from your sister since you came across?

A. No.

Q. At the time you got the $6.00 at New York, did you [fol. 28] ask for any more than that at the time?

A. No, I did not. I just asked for $6.00.

Q. Who paid you the $6.00?

A. The captain, himself.

Q. How much was the $6.00 equal to in English money at the rate of exchange prevailing on that date?

A. £1, 6s, 6d.

Q. Did you come down here to Mr. Axtell's office on the day you made the demand on the captain, on June 8th?

A. Yes.

Q. What time in the morning did you come down?

A. 11 o'clock.

Q. How long did you stay down here?

A. About an hour waiting to see him.

Q. How long were you in town that day?

A. I got back aboard the ship again about 2 o'clock in the afternoon.

Q. What was the occasion for your visit to Mr. Axtell's office that day?

A. I got no satisfaction from the captain. I could not get any money from him.

Q. When did you make the demand? Did you make the demand before or after you came to Mr. Axtell's office?

A. Before.

Q. Did anybody show any slips to the captain when you made the demand?

A. The same day when we went to the office. I asked him but he refused me. I got the slip and went back to him and presented the slip. We was waiting for him aboard the ship all the afternoon. We did not see him until half past ten.

Q. Did you draw any pay besides the £4 while the ship was at Manchester or during the voyage across?

A. No.

[fol. 29] When did you leave the ship at New York for good?

A. The 9th.

Q. Did you take your baggage and all your things with you?

A. We wanted to take it with us but they would not let us have it until the 9th.

Q. You left on the ninth?

A. Yes.

Q. Taking all your belongings with you?

A. Yes.

Q. Did you intend to go back on the ship or quit her for good?

A. Quit her for good.

Q. Did you ask the master for permission to quit?

A. I asked the captain for a pass and he refused to give me one.

Q. Did you see the British Consul?

A. No, I did not bother with the British Consul.

Q. British seamen usually go to see the British Consul?

A. Yes, but the British seaman does not get satisfaction from the British Consul. He only gets abuse.

Q. Did you go on the ship at Manchester the same day you signed articles?

A. No, the following morning. 4 o'clock.

Q. When did you take the advance, the day you went on board?

A. Yes.

Q. Not the day you signed on?

A. No.

Q. Did you give this notice to the captain that you had with you at the time?

A. Yes.

Q. Is that your writing?

A. Yes.

Q. You showed him that, did you?

A. Yes.

[fol. 30] JOHN K. JACKSON, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?
A. John K. Jackson.
Q. Where are you from?
A. Australia.
Q. Are you a sailor?
A. Yes.
Q. Deck Department?
A. Deck Department.
Q. How old are you?
A. 27.
Q. British subject?
A. Yes.
Q. Were you a member of the crew of the Archimedes?
A. Yes, sir.
Q. At what rate of wages?
A. £10, 10s, a month.
Q. Where did you join her and on what date?
A. Manchester. I cannot tell you exactly the date.
Q. With the other fellows?
A. Yes.
Q. Same time?
A. Yes.
Q. Did you get any advance on joining?
A. £4.
Q. What form of an advance was it?
A. Just a piece of paper with Lamport & Holt Line on the top, and I had to take that to somebody to cash it.
Q. Who did you take it to?
A. Fellow by the name of Thompson.
Q. What is his business?
A. Seamen's outfit for clothes.
Q. Did he give you cash for it or what?
A. Yes, he gave me about £2, 15s.
[fol. 31] Q. For £4 advance?
A. Yes.
Q. What became of the rest of it?

A. They stopped that for cashing the note.

Q. You mean he charged £2?

A. No, thirty shillings.

Q. For cashing the £4 note?

A. Yes.

Q. Is that a contract? Is that the customary charge?

A. Yes, that is the customary charge. It is this way. If he would not cash it you would have to take it to somebody else and then you would not get it cashed at all because if nobody cashes that note and you do not go in the ship, they lose the money.

Q. Are you married or single?

A. Single.

Q. Where has your home been before?

A. Melbourne. Victoria Ave.

Q. Did anything happen in New York with regard to wages?

A. No, we just went in for some money and he gave me $6 or $7. $7 I think it was and then we wanted some more and he would not give it. We wanted half of what was due us.

Q. What did you say to him about it?

A. Well, I took him down to see the note.

Q. That paper you have in your hand?

A. Yes.

Q. Did you show him that?

A. Yes.

Q. What did you say to him at the time?

A. We went for more money first and he would not give it to us. He told us he would not give us one draw and of course we came down to you that day and you told us how to go about it. You gave us this note and I told him about it.

[fol. 32] Q. I told you to demand half wages?

A. Yes.

Q. I gave you that note?

A. Yes.

Q. What day did you come to me? The same day you demanded the money or before?

A. After we demanded the money and he would not give it to us.

Q. Were you here before you demanded half wages? You came here before?

A. Yes. It was the same day. The same morning he told me to go ashore, the chief officer and he would give me the money. That was when I turned to in the morning.

Q. What did the captain say when you showed him that note?

A. He would not take any notice of it.

Q. Who was there?

A. The whole crowd.

Q. Did any of them say anything about it?

A. Yes, they did the same as me. They showed the captain the note.

Q. They wanted half wages?

A. Yes.

We will put the note in evidence.

Q. After that, what did you do?

A. Well, I told him I was going ashore so I took my bag and I took it ashore but when I got to the gate, the custom house officer passed it and said it was O. K. but the watchman on the gate, he would not let me pass with the bag unless I had a pass from the chief officer or captain of the ship so I went to them but they would not give me one so I took the bag back aboard the ship and slept there that night and went ashore in the morning.

Q. What did you do then?

[fol. 33] A. The custom fellow passed the bag again and the watchman would not let us go.

Q. Who employs the watchman?

A. Lamport & Holt or White Star, Pier 58.

Q. Did he have a uniform?

A. Yes, just the same as a policeman.

Q. Nothing to indicate what line he worked for?

A. He had a badge on.

Q. Did the badge indicate who he was employed by?

A. No, he had a number on it.

Q. Was he a policeman?

A. No, he was just a watchman.

Q. After your clothes were held up, what did you do next?

A. I came down to see you but you was out. I saw Mr. Axtell, Jr., and he gave me that letter. Lewis has got the letter outside.

Q. Go get it.

(Witness goes and gets letter.)

Q. Is this the letter which you showed to this watchman?

A. Yes.

Q. And did he release your clothes then?

A. No, he sent me up to Mr. Williams, Superintendent of the White Star Line and Mr. Williams, he could not get us to go through so he got on the phone to the Lamport & Holt Line Office and then he came back to us and said that we could pass.

Q. How long was he gone before he came back?

A. We went to see Mr. Williams ourselves.

Q. What did he ask you?

A. I just showed him that letter.

Q. Anything else?

A. No, he asked me why we wanted to get out of the ship. That is all.

[fol. 34] Q. Then, he gave you a pass for your clothes?

A. No, he never gave us a pass. There was another policeman up there and he sent him down with us to tell the watchman to let us through.

Q. And you took your clothes and left?

A. Yes.

Q. How about your discharge and passports?

A. I got my passport with me but my discharge book is with the captain or else he sent it to the British Consul.

Q. Where did you last see it?

A. In Manchester.

Q. In whose possession?

A. The Superintendent of the Shipping office in Manchester.

Q. Who took it?

A. These books go to the captain.

Q. Did you ever see it in the captain's possession?

A. No, sir. They customarily turn it over to the officer who signs you on.

Q. And they give it to the captain of the ship?

A. Yes.

Q. Now, did you ask for your discharge book?

A. No, I never asked him for it because I knew very well he would not give us it. He could not give it to us under the regulations of the British Shipping Act. He is not permitted to give it to you unless you are paid off and discharged before a Consul.

Q. Is that it?

A. Yes.

I will put the letter in evidence.

Q. How much did you have coming to you at the time you demanded half wages?

A. £2, 14s and 6d., but I am not certain.

[fol. 35] Q. Is that including the advance?

A. That is clear of the advance.

Q. That is not counting the advance as a payment? That is outside of the advance?

A. No.

Q. You got £2, 14s?

A. Yes.

Q. Is that the total due you or half?

A. Total, but I demanded half of that.

Q. Did you have any slops on the ship?

A. No, sir.

Q. You did not draw any slops?

A. Oh, tobacco, five shillings.

Q. You drew how much cash in New York?

A. Six or seven dollars. I forget now. It was either six or seven.

Q. You worked three weeks?

A. Yes.

Q. £10 10s?

A. Yes.

Q. How much does that amount to somewhere around in pounds for three weeks' wages? How many pounds?

A. £7, 4s.

Q. All that you had drawn was $6 and five shillings?

A. I could not say. You see, I was on two voyages.

Q. You drew this on one voyage and not on the other?

A. Yes, but I am not certain which it was.

Q. Assuming it was this and you drew five shillings, that would make it $7.25 altogether and your earned wages were $31.50, that would leave you about $24 balance?

A. Yes.

Q. Half of that would be $12 about?

A. Yes.

Q. That is not counting the advance at all?

A. No.

[fol. 36] Q. That is, we figure it as though the advance was never paid?

A. Yes.

Q. Did you ever make any previous demand in this port on this voyage for half wages?

A. No, sir.

Q. Subject ever mentioned by yourself or any other members of the crew in the way of a demand to the captain at any other time previous to this time. Had any of you made any demand for half wages?

A. To tell you the truth, one man, Clark did.

Q. But none of these men in this claim never made any claim for half wages?

A. Not that I know of.

Cross-examination.

By Mr. Dean:

Q. At the time you received from the master six or seven dollars, did you ask him for any more than that?

A. No.

Q. Do you remember what day of the week or what day you received this money?

A. About two weeks ago.

Q. That must have been about June 7th?

A. I could not tell you.

Q. Was it on a Friday or Saturday?

A. It was on a Saturday.

Q. Did you draw any pay after you went aboard the ship at Manchester or during the voyage?

A. No.

Q. Did you know this man, Thompson that cashed the advance note for you there?

A. Yes.

Q. How long did you know him?

[fol. 37] A. Well, I just know him as a casual acquaintance. Every seaman in Manchester knows him.

Q. Did he have a store there?

A. Yes.

Q. Did you buy things in his store?

A. Yes, such as oil skins and sea boots.

Q. When you cashed this advance note, did you buy anything at the time?

A. No.

Q. Did you owe him anything at the time you cashed it?

A. No, sir.

Q. Have you been to the British Consul to make a complaint?

A. No, sir.

Q. When you left the ship, you did not intend to return when you went off with your baggage?

A. No, I did not want to go back. There is no use for me to go to the British Consul. He is only good for the Lamport & Holt Office. If I would go there, he would tell me to get out of his office. That is what he would tell me. I was told to go ashore. This was my second voyage on the ship.

C. R. Shotton, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?

A. C. R. Shotton.

Q. Where were you born?

A. Olderton.

Q. How old are you?

A. 23.

Q. How long have you been going to sea?

A. Five years.
Q. What country do you belong to?
A. England.
[fol. 38] Q. What were you on the Archimedes?
A. AB.
Q. What rate of wages?
A. £10, 10s a month.
Q. Where did you join and on what date?
A. Manchester, the 19th.
Q. When did you sign articles?
A. 17th.
Q. Did you get any advance?
A. £4.
Q. Are you married or single?
A. Single.
Q. In what form was the advance paid?
A. Paid in note. It is not cashed until after the ship leaves.
Q. When did you cash it and where?
A. Pawn broker.
Q. What was his name?
A. Thompson.
Q. What did you get for it?
A. £3, 12s.
Q. Did you get anything besides cash?
A. No, nothing besides cash. He took out the rest.
Q. Eight shillings?
A. Yes.
Q. Did you get any cash after you joined the ship?
A. No, not after.
Q. Did you get any at New York?
A. Yes.
Q. What date did you arrive here?
A. Arrived here on the 1st of June.
Q. What day after arrival did you draw any money?
A. Saturday.
Q. Any demand made for any draw or was it paid without any demand?
A. We all put in a list for money.
Q. Is that customary on a ship that comes in port?
A. Yes.

Q. You drew $6.00?
A. $3.00.
Q. All you got was $3.00?
A. Yes.
[fol. 39] Q. What did the rest of them get?
A. Some got $6 and some got $7.
Q. Did these other men draw at the same time, that are in this case with you?
A. Yes.
Q. The whole crew drew?
A. Yes.
Q. Every man besides yourself?
A. Yes. All those who wanted to.
Q. When did you next make any demand for wages?
A. After I had been to see you.
Q. What date was that?
A. 8th.
Q. Did you say anything to the skipper about drawing any money before you came to my office on that date?
A. No.
Q. What did you come here for?
A. Because the captain would not give us any money.
Q. How do you know he would not, if you did not ask him?
A. Because he told us on the previous draw that he would not give us any more money.
Q. On the previous draw, was anything said by anybody about half wages?
A. No, nothing said.
Q. Sure of that?
A. Yes.
Q. On this 8th, after you came here to get advice, what happened?
A. We asked him for more money.
Q. What did you say to him?
A. Lewis asked him if he could have some more money, so he said no, so Lewis handed him this slip.
Q. What slip?
A. This.
Q. Have you got one of them?
A. Yes.
Q. Let us see it?

Q. Did you have this slip at the time?

A. Yes.

[fol. 40] Q. Did you say anything about it?

A. He would not look at it. He only looked at one of the slips.

Q. What was said?

A. We just asked him for more money and he said he would not let us have any more.

Q. Did you say anything to him personally, yourself about this slip.

A. No, I did not say anything personally.

Q. You showed him the slip?

A. Yes.

Q. Did he look at it?

A. He looked at one slip, Lewis's.

Q. What did he say after that?

A. He would not have anything to do with it.

Q. What did he say. Do you remember his words, if he used any or what he did?

A. He just said, "Pooh."

Q. After that you left the ship?

A. The following day.

Q. Did you take your clothes off?

A. We could not get the clothes off that day.

Q. Held up at the dock?

A. Yes.

Q. You went to see the Superintendent?

A. Yes.

Q. Had a letter?

A. Yes.

Q. Did you get your discharge book?

A. No.

Q. Did you get your passport?

A. Yes.

Q. Have you made any demand upon the captain for your discharge book?

A. No.

Q. Where did you last see that book?

A. In the Shipping Office, in Manchester.

Q. In whose possession was it at that time?

A. Shipping master.

[fol. 41] Do you mean a Government official or do you mean some crimp. A shipping master here is a crimp. What do you mean by shipping master?

A. The master who signs you on the articles.

Q. That is an official from the Government?

A. Yes.

Q. From the Shipping Federation?

A. Yes.

Q. You are going to go to sea again?

A. Yes, sir.

Q. What kind of ships are you going on?

A. American ships.

Q. Are you going to stay in this country?

A. Yes.

Q. Are you going to get your papers out or not?

A. Yes.

Q. When did you make up your mind to become a citizen of this country?

A. When I left the ship.

Q. Have you any relatives in England?

A. Yes.

Q. Who are they?

A. All my relations are in England.

Q. Married or single?

A. Single.

Q. Your father and mother over there, I suppose?

A. Yes, sir.

Cross-examination.

By Mr. Dean:

Q. You have been around to see the British Consul?

A. No, not the British Consul.

Q. When did the master say that you could have but one draw at New York?

A. The voyage previous, he told us about that.

Q. Did he say anything about it this voyage?

A. Yes, he said, only one draw.

Q. When did he say that?

A. At the time we got our money.

[fol. 42] Q. At the time you got those $3.00 that you mentioned?

A. Yes.

Q. Did the captain state that you put in a list asking for the amount of money that you got at New York?

A. Yes.

Q. He told you to put in the list?

A. Well if the captain is willing to pay out the money, you put in the list.

Q. You did not see the list yourself?

A. I wrote my name on it.

Q. Did you put in how much you wanted?

A. Yes.

Q. $3.00?

A. Yes.

Q. That is all you got?

A. Yes.

Q. When did you next ask for pay?

A. After I had been up here on Thursday, five days afterwards.

Q. Why did you not ask the master before going up to Mr. Axtell's office?

A. Because I knew I would not get it.

Q. How did you know it?

A. He told us.

Q. When?

A. On the previous draw, he told us.

Q. Previous draw or previous voyage?

A. Previous draw.

Q. Who did all the talking to the captain?

A. Lewis handed him a slip and Wilson read out part of a letter.

Q. You made a voyage on the ship before

A. Yes.

Q. Did you have any trouble then?

A. No.

[fol. 43] Q. Was Lewis on that voyage?

A. Yes.

Q. I note that on Exhibit 4, on which appears your signature has the figures £3, no shilling and 9d. Who wrote those figures?

A. I wrote those figures.

Q. What do they represent?

A. That is half the money due me.

Q. Half the money?

A. Yes.

Q. And you figure then that the amount due you was—£6, 18d.

A. Yes.

Q. Did you take into consideration the advance?

A. Yes.

Q. You did not deduct the advance?

A. No. Half the advance is in this.

Q. You worked three weeks?

A. Yes.

Q. How much did you have coming to you for three weeks?

A. £7, 7s.

Q. Did you, in making your claim, deduct £4 from the £7 and something that you already earned.

A. I deducted what I had drawn. $3.00 and deducted half of the advance. That is $2. and five shillings for tobacco.

Q. Why did you deduct half of the advance?

A. Because it was a demand for half the money.

Q. I am talking about the £4, did you deduct half of that?

A. Yes.

Q. When you left the ship in New York, you did not intend to return?

A. No.

Q. You were through with the ship for good?

A. Yes.

Q. Had you dealt with this man Thompson before?

A. Yes.

Q. Buy things from him?

A. Yes.

[fol. 44] Q. Did you owe him anything when you cashed this £4 note?

A. No.

Q. Did you allot any of your wages for this voyage?

A. No.

WILLIAM LEWIS, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?
A. William Lewis.
Q. How old are you?
A. 30, the 13th of June.
Q. Where were you born?
A. Douglas, Isle of Man.
Q. Where did you join the Archimedes?
A. Signed on the 17th day of May at Manchester and went aboard the 19th.
Q. Did the other men sign at that time?
A. Yes, sir.
Q. What wages were you getting?
A. £10 per month.
Q. What capacity?
A. Able bodied seaman.
Q. Quartermasters get ten shillings more?
A. Yes.
Q. Did you get any advance on joining?
A. Yes, sir.
Q. How much?
A. Four pounds.
Q. In what form?
A. Paper form.
Q. To whose order was the paper?
A. Anybody who like to cash it.
[fol. 45] Q. Was it made to cash or to your order?
A. To anybody who wanted to cash it. You had to pay so much a pound for cashing it. I paid two shillings.
Q. It cost you two shillings a pound to have it cashed?
A. Yes.
Q. How much cash did you get out of it?
A. £3, 12s.
Q. Where did you cash it?
A. Thompson.
Q. Did you get it before you joined the ship?
A. Yes.

Q. Had you earned any money at the time you got the note and cashed it?

A. No.

Q. Where were you living at the time?

A. In a suburb of Manchester.

Q. What kind of a place?

A. Sailor's home in Chester Road, Manchester.

Q. Did you pay any fee for getting the job?

A. No, sir.

Q. When did you arrive at New York?

A. Last Thursday a week.

Q. That would be the 1st of June?

A. Yes.

Q. Assuming that it was the 1st of June, when did you first get any money?

A. On the 3rd of June.

Q. What day of the week?

A. Saturday.

Q. What time of day did you get it?

A. About two o'clock.

Q. Who paid it.

A. The captain.

Q. How much did you get?

A. $3.00.

Q. Was any demand made by you or any others for half wages?

A. Not that day.

Q. When next did you draw any money in New York?

[fol. 46] A. I have never drawn any money in New York.

Q. Did you make a demand?

A. Yes.

Q. When was your next demand?

A. On the 8th.

Q. What time of day?

A. Ten past ten P. M.

Q. Night time?

A. Yes.

Q. What did the captain say?

A. He refused point blank.

Q. Did he say he would give it to you next morning?

A. No, sir. He refused.

Q. What did you show him?

A. I showed him this form. I put it in his hand and he read it over to himself.

Q. Was he sober; in his right senses at the time?

A. Yes, he was sober. He gave it to me back. I asked him what his intentions were for us to read a letter to him.

Q. Did he read the letter?

A. The captain did not read it, but Mr. Wilson read the letter (he's outside). He read the first paragraph and he said it applied to American ships only.

Q. And what else did he say?

A. I asked him if he would give us his definite word that he would give us money in the morning.

Q. Would you have been willing to wait until morning to get it?

A. Yes.

Q. What did you do after that?

A. I asked him if he would give me a pass to take our baggage ashore and the captain said, "I will give you no pass" I asked him if I could go to the chief officer for a pass and he said, "no, you will get no pass aboard this ship."

[fol. 47] Q. Did you get your discharge book and passport?

A. No, sir. I have my passport.

Q. Did you get your discharge book?

A. No.

Q. Did you ask for it?

A. No, sir.

Q. When did you see it last?

A. The day I signed.

Q. Who had it then?

A. The captain.

Q. Where at?

A. Manchester.

Q. What place?

A. The shipping office in Manchester.

Q. Did you know the custom with regard to these discharge books?

A. The custom is that the captain should keep these books until the ship pays off again, but if a man leaves in New York he generally hands them over to the Consul.

Q. You fellows are all claiming your waiting time, two for one until the account of wages is settled in pursuance of the terms of this libel?

A. That is right.

Q. How much time elapsed between your draw of $3.00 and the time that you demanded half wages?

A. Five days.

Q. Did you fellows have in mind the Seaman's Act when you made the demand five days after the first draw?

A. Yes, sir.

Q. Was anything said about half wages the first time you drew money?

A. No mention.

Q. Anybody else besides you that drew any money at that time?

A. Several persons drew money.

Q. Any officers?

A. I don't know whether any officer. All these men drew money and the majority of the ship's crew.

[fol. 48] Q. Is that customary.

A. After you get in port, it's customary on a British ship. You know Saturday night, you take in a show and a few other things.

Q. You only drew $3.00?

A. Yes.

Q. Married or single?

A. Single.

Q. Have you any relatives in England?

A. Yes, sir.

Q. Any over here?

A. No, sir.

Q. What are you going to do now. Are you going to stay here or go back.

A. Stay in New York City.

Q. What are you going to do?

A. I am going to go on American ships. Things are pretty bad in England, and here. I intend to stay ashore in the summer time.

Q. Are you going to report to the Immigration Authorities?

A. Yes.

Q. And get your papers?

A. Yes, at the first opportunity.

Q. Did you fellows have any money when you came ashore?

A. No, sir.

Q. You just walked ashore with your bags?
A. Yes.

Cross-examination.

By Mr. Dean:

Q. You have a job now?
A. Yes.
Q. What doing?
A. Painting.
Q. Regular work?
A. No, sir.
Q. What company?
A. Cunard Line.
Q. Work on board a ship?
A. Yes.
Q. British ships?
A. Yes, but it's American money that I work for.
[fol. 49] Q. You are working for a British Company.
A. I think it a Norwegian man that hired me.
Q. You don't mind seeing a British Flag on a Cunard Line?
A. No, I do not. The British flag looks all right when it's flying.
Q. How long had you been on the Archimedes?
A. Four trips.
Q. How did you happen to get dissatisfied all at once?
A. A new mate came around and he started to change all the rules and did not treat us right.
Q. Did he sign on at Manchester?
A. Yes.
Q. Did he have trouble with you?
A. Yes.
Q. What was the trouble?
A. He was nasty. He did not give us a square deal, changed the rules and made it awful for us.
Q. The other men in this case also had trouble with him.

By Mr. Axtell: I object because it calls for a conclusion.

A. Yes, there was all kinds of trouble.
Q. What did you do about it?

A. We had a half day off on the 8th and we came here to see if we could find out about the American rules a little more.

Q. What kind of American rules?

A. Demand for half wages.

Q. You did that because you had trouble with the chief mate?

A. Yes.

Q. In other words, you decided to go off the ship?

A. Yes. He told one of the men to go off.

[fol. 50] Q. Who?

A. Jackson.

Q. When?

A. 7th, and I was right there and he accused him of whistling and singing and he was doing nothing. He said, this is the captain's quarters and I don't want you whistling or singing or making any noise at all.

Q. Did anybody report the chief mate's conduct to the master?

A. Not to my knowledge.

Q. Did you personally have trouble with him or did you dislike him?

A. I had trouble with him.

Q. Did the other men have trouble with him?

A. Yes.

Q. Is that what caused you men to decide to quit the ship?

By Mr. Axtell: I object on the ground that there is no contention that the man had decided to quit the ship.

A. Well, I was taking it this way. I was getting out sooner or later to become an American citizen.

Q. And you thought this was a good time?

A. Yes.

Q. Because you had a chief mate on there whom you did not like?

A. Yes.

Q. Did you ask for more than $3.00 on June 3rd?

A. No, sir.

Q. Did you need any more than $3.

A. Not that day.

Q. And when did you next ask for pay?

A. On the 8th.

[fol. 51] Q. At what time?

A. 10:10 P. M.

Q. At night?

A. Yes.

Q. I understood some of these other men to say that it was at 10:30 A. M. Are you sure it was at night.

A. At night.

Q. It was not in the morning?

A. No.

Q. All of you men made the demand at the same time?

A. Yes.

Q. What were you doing at that time?

A. We had a half a day off.

Q. What did you do that half day.

A. We came down here.

Q. You were taking a half day off and at the same time learn something about the American law?

A. Yes.

Q. Who had charge of this party to come down here?

A. Mr. Wilson.

Q. Is he pretty good on Seaman's law.

A. No. I asked him to come down.

Q. From the time you drew $3 on Saturday June 3rd, until you came up to see Mr. Axtell, did you ask the master for any pay?

A. I never demanded half pay untl the 8th.

Q. That was after you had seen Mr. Axtell.

A. Yes.

Q. Why did you not go to the master before.

A. He told us that would be the last draw on Saturday, June 3rd.

Q. Did he tell you that before you put down the amount that you wanted?

A. No, sir. He told us that was the last draw.

Q. Where did you put on the amount that you wanted to draw?

A. On the paper.

[fol. 52] Q. On the same occasion did the master tell you that that was the last draw.

A. Two o'clock on Saturday, when I signed for $3.00 the captain told me "Now this is the last draw and don't ask for any more."

Q. Did you expect the master to pay you money at 10:10 at night when you went back to the ship.

A. No, we expected that he would give us a civil answer and also to say what he would do for us the next day.

Q. You were not surprised when he did not listen to the speech that Wilson made?

A. I was not surprised in the least.

Q. In fact you rather anticipated it?

A. We, we were kind of joking.

Q. Who made a speech on that occasion?

A. I made a speech.

Q. What did you say.

A. I asked him if he would give us some money. That was the only way I could spring it on him and he said, "no get out of here."

Q. Where was the master?

A. In the cabin. I knocked at the door and asked the chief steward if I could see the captain so the captain came out.

Q. What clothes did he have on?

A. Shore clothes.

Q. What else happened?

A. We asked him if he would give us some money and he refused point blank.

Q. Did you ask for it right then? What did you say.

A. We asked him for some money.

Q. Were any of you men drinking?

A. No, sir.

[fol. 53] Q. Was the master drinking?

A. No, sir.

Q. You had liquor on board?

A. I suppose.

Q. A British seaman on a British ship may drink liquor?

A. Yes, but——

Q. Who else besides yourself made speeches?

A. Mr. Wilson.

Q. Mr. Wilson had prepared the address which Mr. Axtell had written for him?

A. Yes.

Q. And he started to read it?

A. Yes, but the captain, he was kind of stamping with his feet and he would not listen.

Q. All of you men stayed on board that night?

A. Yes, we had to. We wanted to take our things ashore but we could not get a pass.

Q. When did you first take them?

A. Just after he refused the money.

Q. You took your things and prepared to leave the ship?

A. Yes, but we had no pass. The customs would not inspect the luggage that night and we had no pass to get out. The watchman would not let us go through so we decided to leave them by the Custom, but the watchman said, "No, take them aboard," so we had to take them aboard.

Q. You left the ship that night with your baggage intending to get out?

A. Yes.

Q. Did you intend to return to the ship?

A. No.

Q. What time next morning did you leave?

A. The watchman told us that night that the custom office would be open at 8 o'clock. We were there 8 o'clock and passed the custom house but we had no pass. We told Mr. Axtell we could not get our bags ashore. It was [fol. 54] already passed by the Customs but the watchman would not let us take them outside.

Q. What time did you get away from the ship that morning?

A. Eight o'clock.

Q. And your baggage was left on board?

A. Yes.

Q. Later on you got it?

A. Yes, in the afternoon.

Q. You did not do any work?

A. Yes.

Q. What time were you supposed to turn to?

A. Seven.

Q. Did you ask the captain for permission to leave?

A. No, sir.

Q. Have you been to see the British Consul about this?

A. No, sir.

Q. How much was your slop account at the time you left?
A. $3 and five shillings tobacco.
Q. You count the $3 that you drew?
A. Yes. That is all I had off the ship, $3 and five shillings tobacco.

By Mr. Axtell:

Q. Have you got a slip?
A. Yes, here it is.

(Marked as Exhibit 5.)

By Mr. Dean:

Q. I note on Exhibit 5 figures £3 no shillings and 9d. Who wrote these figures?
A. Myself.
Q. Did you deduct the advance from the amount that you had earned?
A. No, sir.
Q. How much had you earned up to June 8th?
A. £7.
Q. And you had already received £4. Did you deduct that?
A. No, sir.
Q. Why did you not deduct that?
A. Because it's not legal in this country.
[fol. 55] Q. Who told you?
A. Mr. Axtell, himself.
Q. You did not know that before?
A. I already knew it but I did not think it was enforced.
Q. You are pretty lucky?
A. Sure.

LIBELLANT'S EXHIBIT IN EVIDENCE IN DEPOSITION OF WITNESS JACKSON

Law Office of Silas Blake Axtell, 11 Moore Street, New York

June 8th, 1922. 5402.

To whom it may concern:

This is to certify that under the law of the United States, a seaman on foreign vessels while in the waters of the United States for the purposes of loading or discharging cargo, may demand and receive half wages due and unpaid. If the demand is refused, the contract is ended and the seaman may leave the vessel without interference taking all of his belongings with him including his passport, discharge books and other things. The Act is binding as the law of the place where the demand is made and is not governed by any foreign law as all treaties with foreign countries have been rescinded by the United States.

[fol. 56] In figuring wages due, advances paid in foreign ports before the wages are earned may not be considered as part of the wages paid by the ship. Such advance wages must be paid over again in the United States if the seaman desires and demands it. Unless the full amount of half of the balance of wages due and remaining unpaid including half of the demand, is paid, the seaman may leave the ship, and bring action to recover the whole of his wages and he will receive in addition two days for every day he is compelled to wait after forty-eight hours from the time he leaves the vessel.

Yours very truly, (Signed) S. B. Axtell.

LIBELLANT'S EXHIBIT IN EVIDENCE IN DEPOSITION OF WITNESS JACKSON

Law Office of Silas Blake Axtell, 11 Moore Street, New York

June 9th, 1922.

Customs officer or watchman in charge Pier 58, North River, New York City.

DEAR SIR: Bearers, five of the members of the crew of the "Archimedes," which now lies at your pier, are desirous

[fol. 57] of obtaining their baggage which is being held by you because of their failure to secure a pass from the master of the ship. As I understand, these bags have been duly inspected by the Customs Officer, and are O. K. in that respect.

I wish to state that no seaman's baggage can be held up in this country. That these men have a right to go ashore with their clothes and remain in this country, for the purpose of reshipment which they intend to do immediately. They are leaving the vessel because of an infraction of the Seaman's Act, to-wit: the failure of the master to pay them half wages now due, and under the same act, they are within their rights if they take their clothes and leave the vessel. I merely wish to call your attention to the fact that you are exceeding your authority by retaining the clothes of these men at the dock, and refusing to allow them to take them out.

Very truly yours, (Signed) Silas B. Axtell.

LVA/FL.

[fol. 58] DEPOSITION FOR CLAIMANT

[Title omitted]

Deposition on Behalf of the Claimant, Taken at the Office if Messrs. Burlingham, Veeder, Masten & Fearey, 27 William Street, July 19, 1922

Appearances: Messrs. Burlingham, Veeder, Master & Fearey (Mr. Dean) for claimant; Silas B. Axtell, Esq., for libellants.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

GEORGE BLACKER, being duly sworn and examined as a witness for the claimant, testifies as follows:

By Mr. Dean:

Q. How long have you been going to sea?

A. All my life, 35 years.

[fol. 59] Q. What certificate do you hold?

A. British master's.

Q. How long have you held it?

A. Held two, the last one 1901.

Q. Were you master of the steamship Archimedes during the voyage which commenced May 19, 1922, from Manchester to New York?

A. Yes.

Q. She is a British ship?

A. British ship.

Q. How long have you been master of the Archimedes?

A. Three years, a little over three.

Q. Did you sign a crew on at Manchester?

A. Yes, to be on board June 19th.

Q. May or June?

A. May 19th.

Q. Did they sign British shipping articles before a shipping master?

A. Yes.

Q. When did you arrive at New York?

A. June 1st.

Q. When in the course of the voyage did the crew first draw pay?

A. They had the usual advances by the Board of Trade in England before joining, to be paid three days after the ship leaves port.

Q. Then when did they draw pay?

A. June 3rd.

Q. Where?

A. New York.

Q. What day of the week was that?

A. Saturday.

Q. Do you recall John James Jackson, William A. Wilson, Christopher R. Shotten, William Lewis and Thomas W. Hooper, members of the crew?

A. Yes, sir.

Q. Did they draw pay on Saturday, June 3rd?

[fol. 60] A. On Saturday, June 3rd, they drew pay to any amount they asked for.

Mr. Axtell: I move to strike out the latter part of the answer.

Q. Will you say just what you told the men before they drew pay on Saturday, June 3rd?

A. I told them they could have any reasonable amount as long as it was due them, I had only one request, that they take it all at one time instead of bothering me.

Q. Is that the custom on that ship to permit only one draw while in port?

A. That is the usual custom.

Q. Had you previously announced that rule to the crew?

A. Yes, and it is well understood, all the men had been in the ship more than one voyage, some two or three years.

Mr. Axtell: I move to strike that out as a conclusion of the witness.

Q. Had the men whose names I have just mentioned and who are the libellants in this suit made previous voyages on the Archimedes?

A. They had all made a previous voyage, some had made several.

Q. You say you had announced on previous occasions that you would pay their wages only once while in port?

A. Yes, and the ship had made nine voyages and on only one occasion did I pay twice, then I told them it was the last time, from this out draw everything you want on Saturday.

Q. Did the libellants ask for wages and receive the [fol. 61] amounts they asked for on this occasion?

A. Yes, whatever they asked for they received.

Mr. Axtell: Objected to as leading.

Q. Have you in your possession statements showing the wages, earnings and deductions of the libellants for the voyage in question?

A. Yes, I have the originals.

Q. Do they bear the signatures of the libellants?

A. Yes.

Q. Is there a separate sheet for each man?

A. A separate sheet for each one.

Q. And is there annexed to each the advance note which he received at Manchester?

A. Prior to joining, yes, that is annexed to the original.

Mr. Dean: I offer the papers in evidence.

They are marked Claimant's Exhibit A.

Mr. Axtell: No objection except that we don't admit the accuracy of the conclusions set forth by the master in his accounts appended to the advance notes, they may be accurate, I don't know.

A. All those articles have been gone over by the shipping master at Manchester.

Q. Captain, do all these advance notes bear on the back the signature of the man who received the advance note?

A. Yes, and there is a clause there that the man must understand when he is signing at the back that he is allotting his money to the person that he names on the back.

Q. Do the sheets headed "Master's Book" (§133 M S A 1894) also bear the signature of each man opposite the [fol. 62] amount in dollars which he drew at New York on June 3, 1922?

A. Yes, the amount in dollars turned into English money at the rate stamped by the British consul, current at the time.

Q. I notice the item "tobacco," what does that represent?

A. Tobacco supplied on the voyage that is supplied by the steward which he keeps in his own book and they sign for it in that book.

Q. I see an item "Unemployment," what does that mean?

A. That is a British law, same as a national insurance, the man paid so much, 5d or 8d.

Q. Is that deducted from the man's wages by virtue of the British law?

A. By virtue of the British law.

Q. There is also an item "Deduction for Health Insurance," what is that?

A. The same.

Q. A similar deduction required by British law?

A. By British law.

Q. Did the libellants make a second demand for wages while the vessel lay in New York?

A. Yes, on June 8th, at 10 p. m. they came to me and asked for more money.

Q. What did you say to them?

A. I told them as they had already had one issue and I asked them to demand what they wanted and as I had

already given them in some cases more than was due I refused to give them any more.

Q. Have you a statement showing the balance due each man after he had drawn wages on Saturday, June 3rd?

[fol. 63] A. Yes, my custom is to rough out what the man has had and what is due—it is never very much, if he has $5 due to him when he comes in and asks for $4 he can have it, if he asks for $5, he can have it; I have always that in front of me.

Q. Will you state in respect of each of the libellants the balance of wages due him after he had drawn wages on Saturday, June 3rd?

A. Yes, because it is all in the wage book.

Q. Just name the balances due each of the libellants if you have a record of them, just read the totals off, that is all we are interested in?

A. Arrived in port——

Q. Just the total is all that I want, you have I believe prepared another statement showing the details?

A. On arrival of the ship Jackson £4:13:4, he had already drawn £4:13:6 and was indebted to the ship two pence.

Q. Read the others off, also.

A. That is on arrival of the ship on the 3rd.

Q. State what is due on the 3rd and the balance due after his draw on the 3rd?

A. On the 3rd at the time of giving these two days after arrival he had £5:6:8 due him, he had already drawn £4:13:6, I gave him an issue of £1:11:6.

Q. Have you prepared a separate sheet for each of the men showing the amount each man had earned up to and including Thursday, June 8, and also showing the amount of deductions?

A. Yes.

It is stipulated that these five papers in red ink prepared by the master can go in as his statement of their ac-

[fol. 64] counts up to and including June 8th, the day they made their demand for half wages.

Mr. Dean: I offer it in evidence.

It is marked Claimant's Exhibit B.

Q. Captain, what does the first line in the column at the right represent—I show you statement of Jackson's earnings and ask you what the first line of figures £4:13:4 at the right represents?

A. Wages due to him on arrival of the ship at New York, June 1st.

Q. What is the second line, £5:6:8?

A. The total wages due to him when the first issue of money was given to him.

Q. What does the third line, £7, represent?

A. The total earnings on June 8th, when he left the ship.

Q. What do the figures £6:10 at the lower lefthand represent?

A. Total deductions from his total earnings including advances, stores and cash supplied in New York.

Q. When you returned to the vessel on the night of June 8th, who acted as spokesman for the libellants?

A. Lewis and Jackson.

Mr. Axtell: Objected to as a conclusion.

Q. What did they say to you and you to them?

A. When I came aboard at 10 o'clock they asked if I would give them some more money. I told them they had already had more than they were entitled to in some cases and refused to give them more, they asked me if I would read a typewritten paper they had, I didn't feel inclined [fol. 65] to do so and declined, however, they were rather keen on it and I said, "All right, to please you I will," but I didn't read it myself because I had not my glasses with me but I allowed them to read to me, as soon as they started I knew it was the United States law regarding a British ship which I already knew.

Q. What did the men do after you refused to pay them anything?

A. Then they asked me pointblank if I refused to give them any more money; I said, "Yes, I absolutely refuse." Then they said, "By this paper we can take our clothes ashore?" I said, "Yes, but I strongly advise you not to do so." I asked them to sleep over it and come and see me in the morning.

Q. What did they do then?

A. That was about a quarter past 10, I suppose, about half-past 10, all their clothes I saw them taking over the gangway, but I had previously sent up to the gate and stopped their clothes going through, thinking that if they would sleep over it they would think better of it in the morning. However, between 8 and half-past in the morning I saw them going away and didn't bother with them.

Q. Did you mark them as deserters in the log book?

A. Then I made up their accounts and went to the British consul, told him about the matter and wrote them off as deserters. The ship was clearing to sail next day. I had to ship new men in their places.

Q. Did you make any entry in the ship's log marking them as deserters?

[fol. 66] A. Made an entry in the official log book and took it up and had it stamped by the British consul.

Q. How much time elapsed from the time the men left you on the ship that night until you saw them leaving the ship with their belongings?

A. About half-past 10.

Q. How much time from the time they left you until you saw them leaving the ship?

A. About a quarter of an hour or 20 minutes, no more than 20 minutes.

Cross-examination.

By Mr. Axtell:

Q. Captain, I show you a photograph of these men, will you take a pen and mark the name of each man on it, which ones they are?

A. Mark it on here?

Q. Just write on the face of the photograph, just on their breasts, I guess is as good a place as any.

Witness does as requested.

Q. Now, was it a paper something like this that they showed you (showing witness paper)?

A. Yes, this was one kind. I think one was a longer sheet.

Q. Who was it that had the paper in his hand when he first addressed you, which one?

A. Seemed to me several of them had a paper but Wilson was the man that read the extract.

Q. You understood it was in demand for half wages, didn't you?

A. For some money.

Q. Here is Wilson's slip—is that the one he was asking you to look at?

[fol. 67] A. Yes, that would be all right but this had already been paid, half of this before he left home, or in Wilson's case—he was the best of the lot—he had already drawn two but I had already given him two, he had more than half of his wages already.

Q. My question is, is that the paper?

A. To tell the truth, I didn't have my glasses with me and couldn't see it.

Q. Do you recall his stating that they demanded half wages under § 4530?

A. No, they never demanded half wages, only asked for more money.

Q. They had a slip similar to this?

A. Yes, similar slips.

Q. And offered them to you, did they not?

A. Yes.

Q. And you refused to take them?

A. I didn't refuse, I asked them to read them to me as I hadn't my glasses with me.

Q. They did read these?

A. No, they read the larger sheet, reading something like the crew of a British ship when they arrive in American port can claim half wages—of their total wages and if I didn't give it to them they could take their clothes ashore.

Q. Did they inform you that under this law advances made in England before joining the ship, before the wages were earned were not valid payments under the laws of the United States in any controversy here?

A. No, they never mentioned that.

Q. Is this the letter they were reading to you?

A. Yes, the first part of that they read to me.

[fol. 68] Q. What did you say?

A. That I had already given them and complied with the British laws and American laws. I refused to give them any more.

Q. Well, they had these other slips at the same time?

A. They had the slips at the same time.

Q. Referring to Plaintiffs' Exhibits 1, 2, 3, 4, 5, half wages demand?

A. Yes.

Q. Now it has been customary for many years to advance wages to crews upon joining in England, has it not?

A. Yes, away back in Nelson's time.

Q. All over the world?

A. Yes, they must, otherwise the people could never live, we are sometimes away for a year, what are their people going to do when we are on long voyages?

Q. There is a difference between cash to a seaman and payment to a relative, is there not?

A. A seaman by British law can leave a month's advance, paid three days after leaving or leave an allotment to be paid weekly to his wife, sister, mother or any blood relative.

Q. These papers that you have identified as advance notes of these seaman are not allotment notes, are they?

A. Those are advance notes.

Q. You understand there is a distinction between an advance note and an allotment note?

A. Yes.

Q. And you understand I take it from your statement to them and here, that while American law recognizes the validity of the allotment note to a relative, it doesn't recog-[fol. 69] nize the validity of an advance note to a seaman himself, you understood that, did you not? Do I make myself clear to you?

A. Not quite, sir.

Q. I will state it again—did you understand at that time that you had the conversation with these men on deck when they were asking for half wages, that while an allotment note as you have described it, is valid according to American law, an advance note is not?

A. I understood that the advance note was just as valid as the allotment.

Q. You thought one was just as good as the other in England or the United States?

A. Yes.

Q. You know the second part of this letter reads "In figuring wages due, advances paid in foreign ports before the wages are earned may not be considered as part of the wages paid by the ship, such advance wages must be paid over again in the United States if the seaman demands it and desires it," do you understand that?

A. I think this was all in force some years ago, during the war, the British consul explained it to me and all its bearings on a British ship.

Q. You didn't know that the statute had been amended since the British Government took the matter up to the Supreme Court of the United States?

A. Yes, I think I did, that last amendment, and it was explained to me by the British consul three years ago.

Q. The amendment wasn't passed until June 5, 1920?

A. He explained to me what I had to do.

[fol. 70] Q. If you had known that according to the American law advances you made as indicated by these notes in England were invalid, that is unlawful, not recognized by law here as valid tender—the same as counterfeit money, would you have paid them the difference?

Mr. Dean: I object to Mr. Axtell's statement of the American law.

A. Even so I can't pay any amount to a man which has already been paid by my owners—if I did——

Q. Irrespective of the law you wouldn't have paid them over again without definite instructions from the owners or the British consul?

A. Unless I had definite instructions from my owners.

Q. No matter what the law was in this country?

A. No, if I do my owners will make me pay the difference and I don't feel inclined to.

Q. The first time these boys drew money they got it as it was advanced to all the crew on arrival?

A. Yes.

Q. It is customary on all the ships in every trade and every port of the world to have the mate or first assistant engineer go around and ask the men how much do you want to draw, something like that, isn't it?

A. Well, as a rule they mostly send in a list.

Q. Somebody prepares a list?

A. That is right.

Q. It is sent to the master?

A. It is sent to the master through the steward.

Q. If the list doesn't call for too much in the master's [fol. 71] judgment he pays in accordance with the request?

A. Yes.

Q. That has been the practice in ships for many years?

A. Yes.

Q. Long before the Seaman's Act of the United States was created, isn't that so?

A. That is so.

Q. Was there any mention of the half wage law or American law on the first draw?

A. No, just the list came.

Q. Nothing said about the half wage law?

A. Nothing said till June 8th.

Q. Till the second time?

A. Till the second time.

Q. Then you felt that because they had this advance and had already drawn more than half that you were not going to pay any more?

A. That I couldn't pay any more.

Q. You did refuse?

A. Absolutely refused to pay any more.

Q. You told them to think it over over night, that it would be foolish to quit the ship and maybe in the morning they would feel differently, but they didn't?

A. I have been over 3 years in the ship, they knew I would sooner give them a day's pay than take it from them.

Q. Were they competent men in their departments?

A. Yes, I should say so.

Q. As good as the average?

A. Yes, we took them back the second voyage, if they were not good we would not have taken them back the second time.

[fol. 72] Q. If they were not satisfactory?

A. If they were not satisfactory.

JOHN CUSICK, being duly sworn and examined as a witness for the claimant, testified as follows:

By Mr. Dean:

Q. Were you boatswain on the Archimedes during the voyage from Manchester to New York which commenced in May, 1922?

A. Yes, sir.

Q. Do you recall John James Jackson, William A. Wilson, Christopher R. Shotten, William Lewis and Thomas W. Hooper members of the crew who left the ship?

A. Yes.

Q. Had these men previous voyages on the Archimedes?

A. Yes, all of them at least one and some had made several previous ones.

Q. Do you recall the men drawing pay the first Saturday after arriving at New York?

A. Oh, yes.

Q. What were they told at that time by the master concerning drawing pay?

A. I believe they were—I wasn't personally concerned in that, I didn't draw any myself.

Q. What is the rule on the Archimedes?

A. To get all you want in the first draw.

Q. And only one draw in port?

A. Only one draw in port, that is a rule of 3½ years.

Q. You have been on the ship how long?

A. Three years and four months—five months.

[fol. 73] Q. Do you remember seeing the libellants on Thursday night, June 8th, on board?

A. Yes.

Q. Where did you see them?

A. I saw them in the midship part waiting for the captain.

Q. Did you say anything to them?

A. Asked what they were waiting for and they told me they were going to get paid off or words to that effect, they were going to get paid off, and I said I didn't think they would, they said they would.

Q. Did they say anything about working the next day?

A. I said we will see what tomorrow morning says and

one fellow says you will only have two in the morning, he was quite correct, I had only two men.

Q. What two men did you have?

A. Gunn and Clark.

Q. Did the libellants Jackson and the others quit the ship?

A. No, I left them standing there, that was 7 o'clock Thursday evening.

Q. Did they work next morning?

A. No, they told me 9 o'clock next morning they weren't going to work, they said they would have to see the captain in the morning, the captain had told them to sleep over it and see him in the morning, they said in any case they were not going to work, they told me, each of the five men themselves personally, I asked each man personally so there is no getting away from it.

Cross-examination.

By Mr. Axtell:

Q. This conversation you had with them was after they had seen the skipper?

A. No, before they had seen the captain.

[fol. 74] Q. You stated that the captain told them he was going to see them in the morning?

A. I didn't state the captain told them he was going to see them in the morning.

Q. What did you say about their sleeping over it?

A. They told me at 7 o'clock Friday morning when I went to start them to work that they were going to get out of the ship, going to get paid off.

Q. That was the next morning?

A. They had been to see the captain the evening before sometime after 10 o'clock and the captain didn't have anything to say or something to that effect and they were not going to work.

Q. Did they say anything about the American law?

A. No, only said they had been to see you I believe and they were going to get paid off.

Q. Did they mention my name?

A. Yes, your name was mentioned two or three days before.

Q. When was that?

A. Friday morning at 7 o'clock.

Q. When was it they asked the captain for half wages?

A. I don't know, I didn't hear them but I believe 10 o'clock that night when they took a note from you they went to the captain.

Q. They went to my office in the morning for advice?

A. That was Mr. Jackson.

Q. Then they returned that night, is that it?

A. Oh, by the way——

Q. He returned that night?

[fol. 75] A. Returned at noon and had his dinner—by the way in what regard did Mr. Jackson come off for advice, on what subject, if you don't mind my asking, there was no dispute until then?

Q. I don't mind telling you he came to ask if he could claim half wages in an American port and I said he could.

A. That is what made me ask you that question.

Q. He didn't say anything bad about the boatswain?

A. They can't, I treat every man fair and square, the reason I asked the question is that the men were contented until Jackson came aboard that noon.

Q. You mean they hadn't said anything to you?

A. I believe the men were bona fide enough, they would have returned to the ship.

Q. When did you first learn they had been to see the skipper about getting more money?

A. I didn't learn it until Friday morning that they had seen him but I knew they were waiting in the evening at 7 o'clock.

Q. What day was it that Jackson went ashore?

A. Thursday at 8 o'clock in the morning he stopped his work—at half past 7 in the morning.

Q. When did they leave the ship?

A. On Friday morning at breakfast time.

Q. Jackson went ashore Thursday morning?

A. Yes, at breakfast time.

Q. You say you noticed excitement among the other men that afternoon after he returned?

A. The men worked until dinner.

Q. Then they had some conference with the captain that evening?

A. Yes, but the only men had any conference with the [fol. 76] captain until the evening,——

Q. That you know about?

A. I do know, I was on board until 7 o'clock in the evening.

Q. Were you present at the conference between the men and the captain?

A. No, I was not.

Q. Well, the next morning you had this conversation that you told Mr. Dean about?

A. Yes.

Q. With the men, that was 7 o'clock in the morning?

A. Yes, when I went to start them to work.

Q. They said at that time the captain had refused to do anything, told them to think it over but they decided they wouldn't stay?

A. They wouldn't stay.

Q. They were going to leave?

A. They were going to leave, in fact they were packed up and returning their bedding before the captain was out of bed in the morning, they were returning their bedding to the chief steward, it belongs to the ship.

Q. They were not going to take the ship's stuff?

A. No.

Q. You tried to stop them from taking their clothes?

A. I told them I thought they were silly.

Q. You tried to stop them?

A. No, if a man thinks he will better himself let him go.

Q. Didn't the captain instruct you to inform the captain at the dock not to take their clothes off?

A. No, sir, he did not.

[fol. 77] Q. The captain said he told somebody, do you know who it was?

A. No, sir, I don't.

Q. Nothing about it?

A. No, but I knew a couple of days before some of them——

Mr. Axtell: Move to strike that out as not responsive.

Redirect examination.

By Mr. Dean:

Q. How long does it take a seaman ordinarly to pack up his stuff?

A. I should think he couldn't do it under one hour at the very quickest, I mean to go around and gather up his things and put them away.

By Mr. Axtell:

Q. When did you first notice them packing their things?

A. I didn't notice but I was told by one of the seaman they started after tea.

By Mr. Dean:

Q. What day?

A. Thursday evening before I went on shore.

By Mr. Axtell:

Q. Shortly after they saw the captain?

A. No, before, they didn't see the captain till 10 o'clock or after and Thursday evening they had already packed their things according to the boy who cleans up for them.

Q. You didn't see any of that yourself, you don't know anything about it?

A. No, didn't see it myself.

Q. You were told?

A. I was told.

[fol. 78] By Mr. Dean:

Q. They did tell you Thursday night that they wouldn't work the next day?

A. Told me there would only be two men working the next day.

Q. And that they would not be the two men?

A. They told me the two who would be working and they were the only two left, they were 8 men, one a night watchman and 7 working and there would be only 2 left.

IN UNITED STATES DISTRICT COURT

[Title omitted]

Silas B. Axtell, proctor for libellants,

Burlingham, Veeder, Masten & Fearey, proctors for claimant; William J. Dean, advocate,

Frederic R. Coudert and Howard T. Kingsbury, counsel for the British Embassy in the United States, as amici curiæ.

[fol. 79] OPINION

AUGUSTUS N. HAND, District Judge:

The libellants are seamen who received advances upon their wages while in a British port. The ship was British, they signed the articles in Manchester, England and each received an advance of wages before sailing. When they reached New York they demanded a sum as half wages based on a calculation which disregarded the advance in the foreign port, and the demand having been refused left the ship and filed this libel for full wages and a statutory penalty,

I shall not discuss the testimony of the seaman Lewis which furnishes considerable basis for supposing that the demand for half wages was not made in good faith, but only as a means whereby these somewhat dissatisfied seamen might desert the ship and at the same time not lose the balance of their wages. The Tairoa, 297 Fed. 449; The Belgier, 246 Fed. 966. The libel must in any event be dismissed because the Jones Act does not cover the payment of advance wages on a foreign ship in a foreign port. This was settled by the decision in Sandberg v. McDonald, 248 U. S. 185, construing Section 11 of the Seamen's Act of 1915. But for the Amendment of 1920 there could be no question that an advance made to a seaman in a foreign port cannot be treated as invalid here if valid, as in this case, when made. After the decision of the Supreme Court in Neilson v. Rhine Shipping Co., 248 U. S. 205, which con-

[fol. 80] hibiting advance payment of wages when made by an American vessel to secure seamen in a foreign port the

Act was amended so as to embrace the words which I have underscored and to read as follows:

"(a) It shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of the section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive either directly or indirectly, from any seaman, or from any person on his behalf, any remuneration whatever for providing [fol. 81] him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

"(e) This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent, of a vessel of the United States would be for similar violation.

"The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance

shall be granted any such vessel unless the provisions of this section have been complied with."

It is contended on behalf of libellants that the amendment of the former clause by the insertion of the words "whether made within or without the United States or territory subject to the jurisdiction thereof" shows that Congress intended to forbid advances by foreign vessels in foreign ports. But the later clause (e) providing that: "This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States" was in the section before amendment and [fol. 82] remained after amendment. The words "as well to foreign vessels while in the waters of the United States as to vessels of the United States" have no qualifying meaning if the section has the same bearing on foreign as on American vessels. It seems more logical to suppose that the words "whether made within or without the United States" were inserted in order to prohibit advances to seamen on American vessels, though made in foreign ports, and to avoid the effect of the decision of the Supreme Court in Neilson v. Rhine Shipping Co., 248 U. S. 205, which held such advances permissible. Clause (e) retained in Section 11 of the Jones Act still permits advances on foreign vessels in foreign ports.

It is true that in Strathearn S. S. Co. v. Dillon, 252 U. S. 348, it was held that half wages wherever earned might be demanded in an American port by a seamen on a foreign vessel and "if the master should refuse to pay them the seaman would be entitled to full payment of wages earned." But Sec. 4530 of the Revised Statutes, as amended, which became Sec. 4 of the Seaman's Act of 1915, provided:

"That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

The court said, at p. 355:

"In the case Sandberg v. McDonald, 248 U. S. supra, we [fol. 83] found no purpose manifested by Congress in Sec. 11 to interfere with wages advanced in foreign ports under

contracts legal where made. That section dealt with advancements, and contained no provision such as we find in Section 4. Under Section 4 all contracts are avoided which run counter to the purpose of the statute."

The libel is dismissed with costs.

A. N. H., D. J.

July 29, 1925.

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE ORIGINAL EXHIBITS

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that all the [fol. 84] original exhibits submitted at the trial of this action need not be printed but may be handed up by either party on argument.

Silas B. Axtell, Proctor for Libelants. Burlingham, Veeder, Masten & Feary, Proctors for Claimant.

Dated New York, December 14th, 1925.

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in [fols. 85 & 86] the above-entitled matter as agreed on by the parties.

Silas B. Axtell, Proctor for Libelants. Burlingham, Veeder, Masten & Feary, Proctors for Claimant.

Dated New York, Jan. 30, 1926.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 87] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—September 28, 1925

This cause having duly come on to be heard before the Honorable A. N. Hand, District Judge, on the pleadings and proofs and having been argued by the advocates for the respective parties and the Court having rendered its decision in writing that the libel should be dismissed with costs; and claimant's costs having been duly taxed in the sum of $61.60,

Now, on motion of Burlingham, Veeder, Masten & Fearey, proctors for the claimant herein, it is

Ordered, adjudged and decreed that the libel herein be and the same hereby is dismissed with costs; and it is further

Ordered, adjudged and decreed that the claimant, Lamport & Holt, Ltd., recover of and from the libellants John James Jackson, William A. Wilson, Christopher R. Shotton, William Lewis and Thomas W. Hooper, the sum of $61.60 its costs as taxed; and that it have execution therefor.

Augustus N. Hand, U. S. D. J.

[fol. 88] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1925

No. 366

Argued April 22, 1926. Decided May 3, 1926

JOHN JAMES JACKSON et al., Libelants-Appellants,

v.

STEAMSHIP ARCHIMEDES, LAMPORT & HOLT LINE, LIMITED,

Claimant-Respondent

Appeal from the District Court of the United States for the Southern District of New York

Before Rogers, Hough, and Mack, Circuit Judges

OPINION

Silas B. Axtell, of New York City (John W. Davis and James M. Nicely, both of New York City, of counsel), for appellants.

Burlingham, Veeder, Masten & Fearey, of New York City (Van Vechten Veeder and William J. Dean, both of New York City, of counsel), for respondent.

Frederic R. Coudert and Howard Thayer Kingsbury, both of New York City, for British Embassy, amici curiæ.

Per CURIAM:

Decree affirmed, on the opinion of Judge Augustus N. Hand in the court below.

[fols. 89 & 90] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—May 10, 1926

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the decree of said District Court be, and it hereby is, affirmed with costs.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

H. W. R. C. M. H.

[fol. 91] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 91] IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 25, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. ~~147~~ 103

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1926.

JOHN JAMES JACKSON, *et al.*,

Petitioners,

—against—

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD. (Claimant),

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN W. DAVIS,
SILAS BLAKE AXTELL,
Attorneys for Petitioners.

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IN THE

Supreme Court of the United States.

OCTOBER TERM—1926. No.

JOHN JAMES JACKSON, *et al.*,

Petitioners,

—against—

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD., (Claimant),

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

John James Jackson, William A. Wilson, Christopher R. Shotton, William Lewis and Thomas W. Hooper, respectfully pray for a Writ of Certiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, in the above-entitled case.

Statement of the Case.

This was a libel by the five petitioners, British seamen, who joined the British Steamship *Archimedes*, May 19, 1922, at Manchester, England, for a round voyage to the United States. At the time they shipped, each of them

received an advance on account of wages varying from £2 to £4, in the form of a negotiable note. Such advances were sanctioned by British law. The vessel arrived in New York on June 1, 1922. On June 3, 1922, each of them received from the Master about $5 or $6. On June 8, 1922, they made a formal demand upon the Master for one-half the wages then earned and unpaid at that time. No wages were due if the petitioners were legally chargeable here with the advances received in England. Their demand was refused, they left the ship, and filed this libel June 9, 1922, in the District Court for the Southern District of New York. The claim in the libel was for full wages earned and due at the time of the demand, advances in England disregarded, together with waiting time under Revised Statutes, Section 4529. The contention that the advances should be disregarded was based upon Section 34 of the Jones Act of June 5, 1920 (41 Stat. 1007), amending the Seamen's Act of March 4, 1915 (38 Stat. 1168). The 1915 Act was amended in 1920 by the addition of the words appearing in italics in the quotation set forth below:

> "(a) It shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the court.

The payment of such advance wages or allotment, *whether made within or without the United States or territory subject to the jurisdiction thereof,* shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive either directly or indirectly, from any seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

* * * * * * * *

"(e) This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with" (41 Stat. 1007).

The respondents contended that the Statute did not make the advances illegal; that, being valid, nothing was due the seamen, and further that the demand of the peti-

tioners was not made in good faith but only to provoke an occasion for deserting the ship.

The District Judge dismissed the libel without passing upon the question of good faith upon the ground that the advances were valid (10 Fed. (2nd) 234). The Circuit Court of Appeals affirmed this decision upon the opinion of the District Judge (11 Fed. (2nd) 1000), decided May 3, 1926, mandate issued May 19, 1926.

It is conceded that under the Act of 1915, prior to the amendment of 1920, this Court decided by a five to four division that advances made under the circumstances of this case were not invalid, *The Talus,* 248 U. S. 185.

Question Presented.

The question presented is whether the amendment of 1920 by the addition of the italicized words heretofore quoted, changed the law so as to render invalid advances made abroad by foreign ships when demand is made in this country for half wages under Revised Statutes, Section 4530.

Reasons for the Petition.

The reasons for which this petition is presented are that the Circuit Court of Appeals has decided "an important question of Federal law which has not been, but should be, settled by this Court", and has decided "a Federal question in a way probably in conflict with applicable decisions of this Court" (Rule 35).

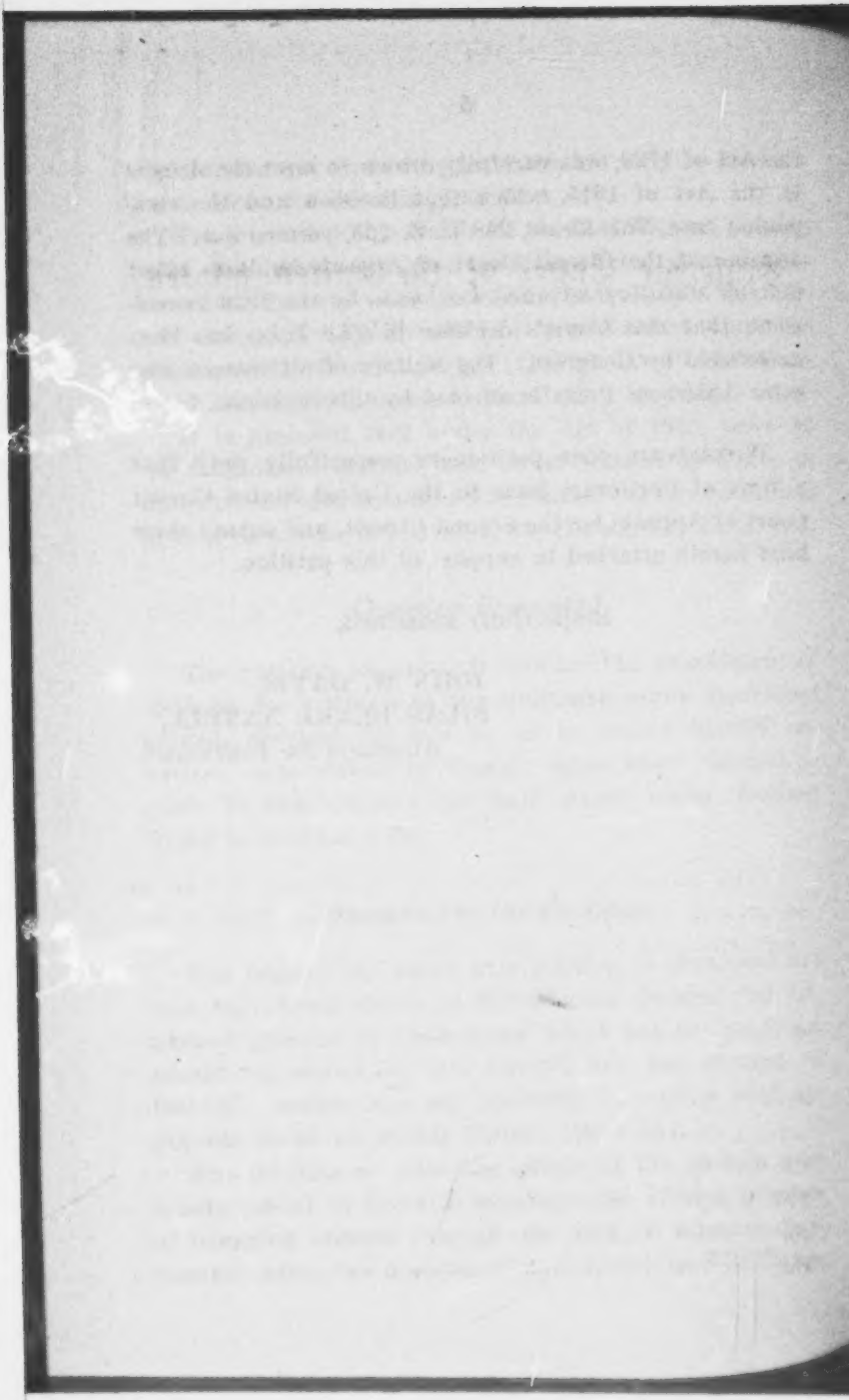
The decision nullifies the efforts of the seamen over a long period of years to eliminate the vicious practice of engaging seamen through the lure of advance payments. After the decision of this Court in *The Talus,*

the Act of 1920, was carefully drawn to meet the defects in the Act of 1915, which that decision and the companion case, *The Rhine,* 248 U. S. 205, pointed out. The decision of the Circuit Court of Appeals holds in effect that no statutory advance was made by the 1920 amendment, that this Court's decision in *The Talus* has been unchanged by Congress. The welfare of all seamen who enter American Ports is affected by this decision.

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, and submit their brief hereto attached in support of this petition.

Respectfully submitted,

JOHN W. DAVIS,
SILAS BLAKE AXTELL,
Attorneys for Petitioners.



IN THE

Supreme Court of the United States.

OCTOBER TERM—1926. No.

JOHN JAMES JACKSON, *et al.*,

Petitioners,

—against—

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD., (Claimant),

Respondent.

BRIEF IN SUPPORT.

POINT I.

The Jones Act amended the Seamen's Act so as to render invalid advances made to seamen under the circumstances of this case.

The Seamen's Act of March 4, 1915, 38 Stat. 1168, was a comprehensive statute designed to promote safety at sea, to improve the conditions of seamen, and more effectively to eliminate the ancient practice of hiring seamen through advances. The viciousness of this practice has been noted in no uncertain terms by the Courts. *The Windrush,* 250 Fed. 180, 182 (2d C. C. A.); *Patterson* v. *Bark Eudora,* 190 U. S. 169, 175. Section 11 of that statute was thought to have been so worded as to

make invalid advances made abroad by foreign ships, when demand was made in this country for half wages as in this case. However, in *The Talus* (*Sandberg* v. *McDonald*), 248 U. S. 185, this Court decided by a five to four division that the Statute did not cover such advances, and invited amendment to the Statute if a further extension of its provision were desired. That case arose on facts like the present, *i. e.*, advances made in a foreign port by a foreign ship. On the day *The Talus* was decided, *The Rhine*, 248 U. S. 205, was decided by the same five to four division.

In *The Rhine* the question was whether advances made in Buenos Aires by the American Master of an American ship were invalid under the provisions of the Act of 1915. The majority held that the Act of 1915 did not cover such advances. These decisions were rendered in December, 1918. Promptly, thereafter and in response to the express invitation of the majority opinion in *The Talus*, the Senate Committee on Commerce, to which the Merchant Marine (Jones) Act was referred, inserted the amendment which added the italicized words. The italicized words are effective to make the advances here involved invalid when a demand for half wages is made in this country.

The District Court concluded that the addition of the italicized words was made only to meet the decision in *The Rhine*, *i. e.*, to make the Act apply to advances made by American ships in foreign ports, but that the amendment did not reach the situation presented by *The Talus*, and hence held the advances valid. The chief basis for this conclusion was that there had been no alteration in the language of paragraph (e) of Section 11 of the Act of 1915; that this section had been relied upon in the

majority opinion in *The Talus* as evidencing an intention on the part of Congress not to affect advances made in foreign ports by foreign ships, and that in the absence of any alteration of this language the amendment could not be said to have changed the result of *The Talus*.

Section 34 of the Act of 1920 containing this amendment was before the Senate on May 14, 1920, at which time Senator Jones, Chairman of the Committee on Commerce, and in charge of the Bill stated the object of the amendment (§34 of the Bill containing the amendment having been read, the following discussion ensued):

> "*Mr. King*: I should like to ask the Senator having this Bill in charge what is the necessity now of re-enacting legislation dealing with this subject?
>
> *Mr. Jones*, of Washington: I will call the Senator's attention to the only change made in the law by this provision. He will note on page 51 in lines 5 and 6 the words:
>
> The payment of such advance wages or allotment—here is the change in existing law:
>
> whether made within or without the United States or territory subject to the jurisdiction thereof.
>
> The Supreme Court has upheld this section and has also upheld the right of Congress to deal with foreign seamen in our ports. The purpose of the provision is to prevent what is called 'crimping' in the securing of seamen. For instance, we prevent by our law advances being made to seamen and sailors in this country. That was simply to prevent the boarding houses or the crimping houses from taking advantage of seamen, as the Senator understands. *The purpose of this section is to*

prevent that as to sailors or ships coming from a foreign port to this country. It is a very common custom in many other countries to require advance payments or wages when seamen ship. Under this provision that practice will be stopped. That is the sole purpose of the proposed change. (Italics ours.)

The Presiding Officer: The question is on agreeing to the amendment reported by the Committee.

The amendment was agreed to."

(59 Congressional Record, Part 7, page 7043—66th Congress, Second Session.)

The above statement by Senator Jones makes it clear that the situation involved in *The Talus* and in the present case was distinctly in the minds of the members of Congress when this amendment was proposed and agreed to. While he does not refer specifically to foreign vessels, no one can read this statement without being convinced that he was referring alike to foreign vessels and to ships of the United States.

It would seem to be an extraordinary conclusion that in the Act of 1920 Congress singled out for legislative change one decision of this Court and ignored another, decided the same day, by the same division, when both of them affected adversely and in a similar manner the cause of seamen's welfare. If the language is consonant with the purpose, it would seem plain that Congress was meeting both decisions of this Court unless there were clear reasons for differentiating between them.

But instead of there being reasons for differentiating, there were strong reasons for treating both decisions

alike. In the present case the result of a holding that the 1920 amendment affected *The Rhine* only and not *The Talus* produces a discrimination against American ships, which is clearly out of line with the familiar Congressional purpose of encouraging American shipping and putting it in all respects on an equal footing with foreign shipping. *Patterson* v. *Bark Eudora*, 190 U. S. 169, 179; *The State of Maine*, 22 Fed. 734, 736; *The Windrush*, 250 Fed. 180. 183.

District Judge Hand's decision means that American ships in engaging seamen in foreign ports will be at a disadvantage because unable lawfully to make advances which foreign ships in competition with them are free to make.

When *The Rhine* was before this Court the argument was made that even if advances made by foreign ships as in *The Talus* were not reached by the Act, the Act at least reached advances made by American ships in foreign ports. The Court was invited to distinguish the two situations. To this Mr. Justice Day replied (248 U. S. at 213):

> "But we are unable to discover that in passing this statute Congress intended to place American ships at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

Judge Hand's decision discovers that in 1920, with this plain statement before it, Congress did intend to place American shipping at a great disadvantage when it added the italicized words to paragraph (a). Whereas in 1918 this Court was moved to decide both cases in

the same way, Judge Hand concludes that in 1920 Congress proposed to distinguish them, and in a manner that seriously prejudices American shipping.

He reaches this conclusion by the negative reasoning that this intention is discovered in the failure to change the language of paragraph (e). It is submitted that such intention is entirely out of harmony with the traditional Congressional attitude toward American shipping, particularly prominent in 1920 when every effort was being made to preserve the war-created Merchant Marine as a permanent body of American shipping, and is not lightly to be found through such negative reasoning.

Paragraph (e) retained a significance in its unaltered form which might have been lost had it been changed. Under the Act of 1915 this paragraph obviously applied to the penal provisions in paragraph (a), making any person guilty of paying an advance on account of wages to a seaman guilty of a misdemeanor, punishable by a fine of from $25 to $100 and imprisonment up to six months. The same paragraph made it a misdemeanor for a person to demand or receive remuneration from a seaman for providing him with employment and this was punishable by a fine up to $500 or imprisonment up to six months.

It is clear that these provisions could not reach acts done abroad, but that they could reach acts done on foreign vessels while in waters of the United States. *Schooner Exchange* v. *McFadden*, 7 Cranch 116, 136, 146; *Wildenhus'* case, 120 U. S. 1, 11; *Patterson* v. *Bark Eudora*, 190 U. S. 169, 173, 178. But in order that it might be clear that these penal sections covered acts done on foreign ships while in ports of the United States, paragraph (e) was inserted. These provisions remained unchanged when the amendment of 1920 was

adopted and, of course, paragraph (e) likewise remained unchanged. To conclude from this that Congress intended to handicap American shipping in the way in which this decision discovers that it did is to lose sight entirely of the real purpose and effect of paragraph (e).

The provisions of paragraph (e) were before and remain effective to render the Master liable in American courts for fine or imprisonment if he makes such advances while within the jurisdiction of the United States. It was important to the effectiveness of the Act that paragraph (e) remain unchanged in order that the penal provisions be clearly understood by foreign shipping. In leaving them unchanged, there is no suggestion of a diminished effect to be given the italicized words in paragraph (a) and it is improper to ascribe such diminished effect to them.

POINT II.

No constitutional or jurisdictional difficulty arises from making the amendment of 1920 apply to advances made abroad by foreign ships.

The suggestion has been made by learned counsel for the British Embassy appearing by leave of the Court in both arguments below that to read the Act of 1920 so as to cover advances made abroad by foreign ships renders the Statute beyond the legislative power of Congress and indeed beyond the jurisdiction of the United States. If any doubt may have been entertained on this point, it has, we think, been put at rest by the decision of this Court in *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348. There the question was whether under Section 4 of the

Seamen's Act (38 Stat. 1165) a contract for wages made abroad between a British seaman and a British ship could be so far nullified by an Act of Congress as to permit the seaman when in a port of the United States to demand one-half earned and unpaid wages under Revised Statutes, Section 4530, although under his contract it was clear that he was not entitled to be paid at that time. The same learned counsel appeared by leave of the Court in that case and made substantially the same argument there as they make now. The Court decided that in legislating in respect of seamen on ships in ports of the United States, Congress was supreme and could impose requirements which had the effect of altering or annulling contracts made abroad which were valid when made.

It is clear that if Congress, when dealing with seamen in American ports, may legislate in such manner as to interfere with contract rights secured abroad, with equal power it may provide that advances made abroad are to be disregarded when computing wages due in response to demands made in this country. *Patterson* v. *Bark Eudora,* 190 U. S. 169, 178; *Cunard S. S. Co.* v. *Mellon,* 262 U. S. 100, 125. It is significant that in the brief submitted in the District Court by counsel for the British Embassy the case of *Strathearn* v. *Dillon,* is not referred to.

To the same effect in his brief before the District Court, counsel for the respondents contended that if the 1920 amendment were held to cover advances made abroad by foreign ships a grave doubt would arise as to its validity and he referred to a statement in the opinion of the Circuit Court of Appeals for the 5th Circuit when

The Talus was in that Court, 248 Fed. 670, 674. That Court said:

> "If this section of the act applies to advances made by a master, owner, or agent of the foreign ship in a foreign port, its effect would be to render such master, owner or agent guilty of a misdemeanor and subject him to prosecution and punishment if found in this country for an act done without the jurisdiction of this country, and which was an unlawful act where done. The competency of Congress to so enact is of such grave doubt that a court would not construe the language of an act to that effect, unless forced so to do."

It is to be noted that the doubt of the power of Congress suggested by the Court here was addressed to the suggestion that the foreign master could be indicted in this country for the act which he had done abroad. We agree with Judge Hough in *The Windrush*, 250 Fed. 180, 183, when he said that it would be absurd to suggest that the Master would be indictble, but it is one thing to doubt the power of Congress to describe an act done abroad as a misdemeanor and to attempt to make it the subject of indictment in this country, and a very different thing to doubt the power to declare that acts done abroad must be disregarded when calculations are involved in this country over which Congress has plenary power to prescribe terms and requirements. Whatever doubt this second proposition may involve was forcibly and clearly set aside by the decision in *Strathearn S. S. Co.* v. *Dillon.*

We concur with counsel for the appellee and with counsel for the British Embassy that acts of Congress are normally to be construed as not affecting the extra-

territorial acts unless the language is plainly directed to that end. These considerations prevailed when the Act of 1915 was before the Supreme Court in *The Talus* and in *The Rhine*. They prevailed, however, by the narrow margin of a five to four division. They prevailed because in the language of the majority opinion, the Court could not discover an intention on the part of Congress to reach such advances, and declined to imply such intention in the face of the usual rule. All need for implication or for resort to the usual rule has been eliminated by the plain statement embodied in the amendment of 1920 that the section is to apply to advances wherever made. In the face of this language this argument advanced by counsel for the appellee and for the British Embassy has no application.

CONCLUSION.

It is respectfully submitted that the decision of the Circuit Court of Appeals fails to give proper effect to the acts of Congress involved herein, and therefore your petitioners respectfully pray that a Writ of Certiorari issue to enable this Court to review the decision of the Circuit Court of Appeals.

Respectfully submitted,

JOHN W. DAVIS,
SILAS BLAKE AXTELL,
Attorneys for Petitioners.

FILED
NOV 25 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1926

No. 103

JOHN JAMES JACKSON, WILLIAM A. WILSON, CHRISTOPHER R. SHOTTON *et al.*,
Petitioners,

vs.

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD.,
Claimant.

BRIEF FOR PETITIONERS.

ON WRIT OF CERTIORARI OF UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED AUGUST 2nd, 1926,
CERTIORARI GRANTED OCTOBER 25, 1926.

SILAS B. AXTELL,
Proctor for Petitioners.

JOHN W. DAVIS,
Of Counsel.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1926.

No. 547.

JOHN JAMES JACKSON, WILLIAM A. WILSON, CHRISTOPHER R. SHOTTON *et al.*,

Petitioners,

vs.

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD.,

Claimant.

BRIEF FOR PETITIONERS.

Petitioners brought a libel herein on July 27, 1922, to recover wages and waiting time under Sections 4530 and 4529 of the Revised Statutes. The District Court for the Southern District of New York dismissed the libel with costs on July 25, 1925, and on May 3, 1926, the United States Circuit Court of Appeals for the Second Circuit affirmed, upon the opinion in the Court below.

The opinion of the District Court appears in 10 Fed. (2d) 234 and in the record of this case, page 62.

Jurisdiction.

The jurisdiction of this Court was invoked by a petition for a writ of certiorari filed August 2, 1926, under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Ch. 229

(43 Stat. L. 938). The petition was granted by this Court on October 25, 1926. The basis of Federal Jurisdiction is that the statements contained in the libel involved the construction of a Federal Statute and brought the question within the Maritime and Admiralty jurisdiction of the United States and its courts.

Statement of Facts.

The libelants are five able seamen who shipped at Manchester, England, on May 19, 1922, on the *Archimedes*, a British steamship, for a round voyage to New York and return. At the time they signed shipping articles, each of them received an advance varying from £2 to £4 on account of wages. The advance was made by the issuance of a note discountable at Manchester. The vessel arrived in New York on June 1, 1922. On June 3, 1922, each of them received from the Master of the ship about $5 or $6. On June 8, 1922, they made a formal demand upon the Master for one-half the wages earned and unpaid at that date. This demand having been refused, they left the ship and filed this libel, June 9, 1922.

The libel set forth the essential facts and demanded in behalf of each individual a sum equal to full wages earned and due at the time of the demand, advances in England disregarded, together with waiting time under R. S. §4529. The answer set forth in substance that the advances in England were valid, and that when they are considered, the payments made to each seaman on June 3, became a payment of wages in excess of one-half the balance of wages then earned and remaining unpaid. There was a further allegation that the demand on June 8 was not made in good faith, but only to provoke an occasion for deserting the ship.

The District Judge did not pass upon the question of good faith but dismissed the libel upon the ground that the advances in England were valid and that, therefore, the seamen's demand on June 8 was not justified. In so concluding, he held that the amendment to the Seamen's Act of March 4, 1915 (38 Stat. 1168), embodied in Sec. 34 of the Jones Act of June 5, 1920 (41 Stat. 1007), did not reach advances made in foreign ports by foreign ships so as to render them invalid when demand for half wages is made in this country under Revised Statutes, Section 4530. It is not disputed that British law and custom sanctioned the advances. It is conceded that under the Seamen's Act of 1915, as it stood prior to 1920, these advances must be considered in computing the wages due when demand is made in this country, and that the Supreme Court so decided in *The Talus,* 248, U. S. 185. The Circuit Court of Appeals for the Second Circuit affirmed upon the opinion of the District Court. The question here presented is whether the amendment of 1920 has changed the law.

Argument.

POINT I.

The Jones Act amended the Seamen's Act so as to render invalid advances made to seamen under the circumstances of this case.

The statute here under consideration is set forth below, the words added in 1920 appearing in italics:

> "(a) It shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same,

or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the Court. The payment of such advance wages or allotment, *whether made within or without the United States or territory subject to the jurisdiction thereof,* shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive either directly or indirectly, from any seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

* * * * * * *

"(e) This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

> The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with" (41 Stat. 1007).

The Act of March 4, 1915, 38 Stat. 1168, was a comprehensive statute designed to promote safety at sea, to improve the conditions of seamen, and more effectively to eliminate the ancient practice of hiring seamen through advances. The viciousness of this practice has been noted in no uncertain terms by the courts. *The Windrush*, 250 Fed. 180, 182 (2d C. C. A.); *Patterson* v. *Bark Eudora*, 190 U. S. 169, 175. Section 11 of that statute was thought to have been so worded as to make invalid advances made abroad by foreign ships, when demand was made in this country for half wages as in this case. However, in *The Talus* (*Sandberg* v. *McDonald*), 248 U. S. 185, this Court decided by a five to four division that the statute did not cover such advances, and invited amendment to the statute if a further extension of its provision were desired. That case arose on facts like the present, *i. e.*, advances made in a foreign port by a foreign ship. On the day *The Talus* was decided, *The Rhine*, 248 U. S. 205, was decided by the same five to four division.

In *The Rhine* the question was whether advances made in Buenos Aires by the American Master of an American ship were invalid under the provisions of the Act of 1915. The majority held that the Act of 1915 did not cover such advances. These decisions were rendered in

December, 1918. Promptly thereafter and in response to the express invitation of the majority opinion in *The Talus,* the Senate Committee on Commerce, to which the Merchant Marine (Jones) Act was referred, inserted the amendment which added the italicized words.

The District Court concluded that the addition of the italicized words was made only to meet the decision in *The Rhine, i. e.,* to make the Act apply to advances made by American ships in foreign ports, but that the amendment did not reach the situation presented by *The Talus,* and hence held the advances valid. The chief basis for this conclusion was that there had been no alteration in the language of paragraph (e) of Section 11 of the Act of 1915; that this section had been relied upon in the majority opinion in *The Talus* as evidencing an intention on the part of Congress not to affect advances made in foreign ports by foreign ships, and that in the absence of any alteration of this language the amendment could not be said to have changed the result of *The Talus.*

In the opinion in *The Talus,* Mr. Justice Day said at page 195:

> "Did Congress intend to make invalid the contracts of foreign seamen so far as advance payment of wages is concerned, when the contract and payment were made in a foreign country where the law sanctioned such contract and payment? Conceding for the present that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and

> payments *a few words would have stated that intention,* not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States." (Italics ours.)

It is the contention of the appellants that Congress met the invitation of this Court to add a few words to the Seamen's Act by the addition of the words "whether made within or without the United States or territory subject to the jurisdiction thereof", in the section making payments of wages in advance unlawful. No longer need that intention be gathered from implication. It has been plainly expressed.

Section 34 of the Act of 1920 containing this amendment was before the Senate on May 14, 1920, at which time Senator Jones, Chairman of the Committee on Commerce, and in charge of the Bill stated the object of the amendment. (§34 of the Bill containing the amendment having been read, the following discussion ensued.)

> "Mr. King: I should like to ask the Senator having this Bill in charge what is the necessity now of re-enacting legislation dealing with this subject?
>
> Mr. Jones, of Washington: I will call the Senator's attention to the only change made in the law by this provision. He will note on page 51 in lines 5 and 6 the words:
>
> The payment of such advance wages or allotment——
>
> here is the change in existing law:
>
> whether made within or without the United

States or territory subject to the jurisdiction thereof.

The Supreme Court has upheld this section and has also upheld the right of Congress to deal with foreign seamen in our ports. The purpose of the provision is to prevent what is called 'crimping' in the securing of seamen. For instance, we prevent by our law advances being made to seamen and sailors in this country. That was simply to prevent the boarding houses or the crimping houses from taking advantage of seamen, as the Senator understands. *The purpose of this section is to prevent that as to sailors or ships coming from a foreign port to this country.* It is a very common custom in many other countries to require advance payments or wages when seamen ship. Under this provision that practice will be stopped. That is the sole purpose of the proposed change. (Italics ours.)

The Presiding Officer: The question is on agreeing to the amendment reported by the Committee.

The amendment was agreed to."

(59 Congressional Record, Part 7, page 7043—66th Congress, Second Session.)

The above statement by Senator Jones makes it clear that the situation involved in *The Talus* and in the present case was distinctly in the minds of the members of Congress when this amendment was proposed and agreed to. While he does not refer specifically to foreign vessels, no one can read this statement without being convinced that he was referring alike to foreign vessels and to ships of the United States.

This is further made evident by his remarks the same day when §33 of the Jones Act was before the Senate. This section made a slight amendment in Revised Statutes §4530, which had been re-enacted with a slight change in 1915 as part of the Seamen's Act. In response to an inquiry as to the purpose of this change, Senator Jones said:

> "It was one of the main contentions, the Senator from Utah will remember, in favor of the Seamen's Act that it would, instead of placing a great burden on our seamen and shippers, bring the wages of the seamen of the other countries up to a level with our own. This provision is intended to aid in carrying out that great purpose." (59 Congressional Record, Part 7, p. 7037.)

It would seem to be an extraordinary conclusion that in the Act of 1920 Congress singled out for legislative change one decision of this Court and ignored another, decided the same day, by the same division, when both of them affected adversely and in a similar manner the cause of seamen's welfare. If the language is consonant with the purpose, it would seem plain that Congress was meeting both decisions of this Court unless there were clear reasons for differentiating between them.

But instead of there being reasons for differentiating, there were strong reasons for treating both decisions alike. In the present case the result of a holding that the 1920 amendment affected *The Rhine* only and not *The Talus* produces a discrimination against American ships, which is clearly out of line with the familiar Congressional purpose of encouraging American shipping and putting it in all respects on an equal footing with

foreign shipping. *Patterson* v. *Bark Eudora,* 190 U. S. 169, 179; *The State of Maine,* 22 Fed. 734, 736; *The Windrush,* 250 Fed. 180, 183.

Judge Hand's decision affirmed by the Circuit Court means that American ships in engaging seamen in foreign ports will be at a disadvantage because unable lawfully to make advances which foreign ships in competition with them are free to make.

When *The Rhine* was before this Court the argument was made that even if advances made by foreign ships as in *The Talus* were not reached by the Act, the Act at least reached advances made by American ships in foreign ports. The Court was invited to distinguish the two situations. To this Mr. Justice Day replied (248 U. S. at 213):

> "But we are unable to discover that in passing this statute Congress intended to place American ships at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

Judge Hand's decision discovers that in 1920, with this plain statement before it, Congress did intend to place American shipping at a great disadvantage when it added the italicized words to paragraph (a). Whereas in 1918 this Court was moved to decide both cases in the same way, Judge Hand concludes that in 1920 Congress proposed to distinguish them, and in a manner that seriously prejudices American shipping.

He reaches this conclusion by the negative reasoning that this intention is discovered in the failure to change the language of paragraph (e). It is submitted that such

intention is entirely out of harmony with the traditional Congressional attitude toward American shipping, particularly prominent in 1920 when every effort was being made to preserve the war-created Merchant Marine as a permanent body of American shipping, and is not lightly to be found through such negative reasoning.

Paragraph (e) retained a significance in its unaltered form which might have been lost had it been changed. Under the Act of 1915 this paragraph obviously applied to the penal provisions in paragraph (a), making any person guilty of paying an advance on account of wages to a seaman guilty of a misdemeanor, punishable by a fine of from $25 to $100 and imprisonment up to six months. The same paragraph made it a misdemeanor for a person to demand or receive remuneration from a seaman for providing him with employment and this was punishable by a fine up to $500 or imprisonment up to six months.

It is clear that these provisions could not reach acts done abroad, but that they could reach acts done on foreign vessels while in waters of the United States. *Schooner Exchange* v. *McFadden,* 7 Cranch 116, 136, 146; *Wildenhus'* case, 120 U. S. 1, 11; *Patterson* v. *Bark Eudora,* 190 U. S. 169, 173, 178.

It has been observed in *The Windrush,* 250 Fed. 180, 183, that the remedial and penal portions of paragraph (a) of the Act of 1915 cannot be separated and that if advances abroad are invalid, a misdemeanor has been committed. It is to be observed that this statement was made in a case involving advances made by an American ship in a foreign port. It may be that under such circumstances an American master commits a misdemeanor and that, therefore, it may be proper to say that the

remedial and penal portions of this paragraph are co-extensive. If that were the case involved in this appeal, the argument just advanced as to the significance of paragraph (e) might not be sound. However, this appeal involves the question of the validity of advances made by foreign ships abroad. Under these circumstances it may very well be true that the master commits no misdemeanor and that no act of Congress could describe his conduct as such. It does not follow, however, that when he seeks entrance for his ship in an American port that he may not be obliged as a condition to such entry to disregard his advances in obedience to an American statute which describes such advances as unlawful wherever made. In short, in the situation presented by this case the remedial and penal provisions may not be co-extensive and the independent significance of paragraph (e) is a reality.

In *The Imberhorme,* 240 Fed. 830 (S. D. Ala. 1917), a case involving the same problem as *The Talus* and the present case, the distinction between the remedial and penal provisions of this section was pointed out by Judge Ervin at page 832 as follows:

> "In other words that even though the penalties declared by the Act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seamen's wages that have been earned, we are directed by the terms of the Act to exclude any advances which may have been made by the ship to the seamen, whether made in a foreign jurisdiction or not and we must follow this rule in calculating the wages of the seamen when a libel is filed in the Admiralty Courts of this country."

It is respectfully submitted that the problem may not be dismissed by any general statement that the remedial and penal provisions of the statute are not to be separated.

The position of the appellants is that whereas the master of the ship might not be guilty of a misdemeanor because of advances made by him in England, nevertheless when his ship enters an American port and he becomes subject to American law in respect of payment of wages to his seamen, a provision making advances unlawful wherever made will be effective to prevent him from considering those advances in computing wages due in ports of the United States. To this end the italicized words making advancese unlawful "whether made within or without the United States" would be effective to make the advances here in question invalid when half wages are demanded in this country.

The provisions of paragraph (e) were before and remain effective to render the Master liable in American courts for fine or imprisonment if he makes such advances while within the jurisdiction of the United States. It was important to the effectiveness of the Act that paragraph (e) remain unchanged in order that the penal provisions be clearly understood by foreign shipping. In leaving them unchanged, there is no suggestion of a diminished effect to be given the italicized words in paragraph (a) and it is improper to ascribe such diminished effect to them.

The extension of the Jones Act to the case of advances made abroad on foreign ships does not require that the courts must enforce a Penal Provision that may not be jurisdictional against subjects of foreign states. It is a fixed rule that Penal Provisions in a statute are to be strictly construed. Penal Provisions can have no greater

import or application than their express words give to them.

The express words of section (e) extend the Penal Provisions of this statute only to American or foreign ships in American waters.

The Penal words of section (a), it is important to notice, are contained in the second and fourth sentences of that paragraph. This section consists of four sentences; and the words of the first sentence, as well as the words of the second and fourth sentences, which contain Penal language, do not expressly apply to advances made to foreign ships in foreign waters.

The third sentence of section (a), contains no Penal Provision. This is the sentence which contains the amendment of 1920, upon which appellant relies in extending the civil remedies of a libel suit and an action for wages, to cases in which advances have been made in foreign ports on foreign ships. This sentence stands alone. Its force as a remedial statute may not be limited or curtailed by any Penal language in other parts of the act.

The third sentence of section (a) because of its highly remedial character should be liberally construed to cover every case which the proponents of the act intended it to cover, including the present case. *Remarks of Mr. Jones, extract from Senate Debates, supra.*

It should be liberally construed to cover every case that may fairly be held to come within the meaning and import of the words used.

Construing section (a) of the Jones Act to extend civil remedies in the ports of this country in the case of advances made in foreign ports on foreign ships does no violence to the terms of the Jones Act, and carries out its spirit and purpose.

POINT II.

No constitutional or jurisdictional difficulty arises from making the amendment of 1920 apply to advances made abroad by foreign ships.

The suggestion has been made by learned counsel for the British Embassy that to read the Act of 1920 so as to cover advances made abroad by foreign ships renders the statute beyond the legislative power of Congress and indeed beyond the jurisdiction of the United States. If any doubt may have been entertained on this point, it has, we think, been put at rest by the decision of this Court in *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348. There the question was whether under Section 4 of the Seamen's Act (38 Stat. 1165) a contract for wages made abroad between a British seaman and a British ship could be so far nullified by an act of Congress as to permit the seaman when in a port of the United States to demand one-half earned and unpaid wages under Revised Statutes, Section 4530, although under his contract it was clear that he was not entitled to be paid at that time. The same learned counsel appeared by leave of the Court in that case and made substantially the same argument there as they make now. The Court decided that in legislating in respect of seamen on ships in ports of the United States, Congress was supreme and could impose requirements which had the effect of altering or annulling contracts made abroad which were valid when made. At page 355, Mr. Justice Day said:

> "We come then to consider the contention that this construction renders the statute unconstitutional as being destructive of contract rights.

> But we think this contention must be decided adversely to the petitioner upon the authority of previous cases in this Court. The matter was fully considered in *Patterson* v. *Bark Eudora,* 190 U. S. 169, in which the previous decisions of this Court were reviewed, and the conclusion reached that the jurisdiction of this Government over foreign merchant vessels in our ports was such as to give authority to Congress to make provisions of the character now under consideration; that it was for this Government to determine upon what terms and conditions vessels of other countries might be permitted to enter our harbors, and to impose conditions upon the shipment of sailors in our own ports, and make them applicable to foreign as well as domestic vessels. Upon the authority of that case, and others cited in the opinion therein, we have no doubt as to the authority of Congress to pass a statute of this sort, applicable to foreign vessels in our ports and controlling the employment and payment of seamen as a condition of the right of such foreign vessels to enter and use the ports of the United States."

It is clear that if Congress, when dealing with seamen in American ports, may legislate in such manner as to interfere with contract rights secured abroad, with equal power it may provide that advances made abroad are to be disregarded when computing wages due in response to demands made in this country.

That part of the opinion in *Patterson* v. *Bark Eudora* especially referred to by Mr. Justice Day reads (190 U. S. at 178):

> "Indeed the implied consent to permit them [foreign merchant ships] to enter our harbors may

> be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the Government sees fit to impose."

This declaration was recently reaffirmed in *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 125.

To the same effect in his brief before the District Court, counsel for the appellee contended that if the 1920 amendment were held to cover advances made abroad by foreign ships a grave doubt would arise as to its validity and he referred to a statement in the opinion of the Circuit Court of Appeals for the 5th Circuit when *The Talus* was in that Court, 248 Fed. 670, 674. That Court said:

> "If this section of the act applies to advances made by a master, owner, or agent of the foreign ship in a foreign port, its effect would be to render such master, owner or agent guilty of a misdemeanor and subject him to prosecution and punishment if found in this country for an act done without the jurisdiction of this country, and which was an unlawful act where done. The competency of Congress to so enact is of such grave doubt that a Court would not construe the language of an act to that effect, unless forced so to do."

It is to be noted that the doubt of the power of Congress suggested by the Court here was addressed to the suggestion that the foreign master could be indicted in this country for the act which he had done abroad. We agree with Judge Hough in *The Windrush* when he said that it would be absurd to suggest that the master would be indictable, but it is one thing to doubt the power of Congress to describe an act done abroad as a

misdemeanor and to attempt to make it the subject of indictment in this country, and a very different thing to doubt the power to declare that acts done abroad must be disregarded when calculations are involved in this country over which Congress has plenary power to prescribe terms and requirements. Whatever doubt this second proposition may involve was forcibly and clearly set aside by the decision in *Strathearn S. S. Co.* v. *Dillon.*

We concur with counsel for the appellee and with counsel for the British Embassy that acts of Congress are normally to be construed as not affecting the extra-territorial acts unless the language is plainly directed to that end. These considerations prevailed when the Act of 1915 was before this Court in *The Talus* and in *The Rhine.* They prevailed, however, by the narrow margin of a five to four division. They prevailed because in the language of the majority opinion, the Court could not discover an intention on the part of Congress to reach such advances, and declined to imply such intention in the face of the usual rule. All need for implication or for resort to the usual rule has been eliminated by the plain statement embodied in the amendment of 1920 that the section is to apply to advances wherever made. In the face of this language this argument advanced by counsel for the appellee and for the British Embassy has no application.

POINT III.

The appellants are entitled to waiting time under Revised Statutes, Section 4529.

The demand for wages in this case was made under Revised Statutes, Section 4530; with that section must

be read section 4529 which, as last amended in the Seamen's Act of 1915, reads as follows (38 Stat. 1164):

> "The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the Court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage."

The claim for waiting time is based upon the language of the above section providing that in the case of vessels making foreign voyages payment must be made to any seaman within twenty-four hours after the cargo has been discharged or within four days after the seaman has been discharged, whichever first happens. Neglect or refusal to make payment as required without sufficient cause results in a penalty upon the master or owner in

the amount of a sum equal to two days' pay for each day during which payment is delayed. This sum is made recoverable as wages in any claim before a court. The language of this section relating to payment upon discharge is very broad and must be read so as to cover a discharge resulting from the failure of the master to comply with the demand of a seaman for half wages under Revised Statutes, Section 4530, as in this case.

Revised Statutes, Section 4530, as last amended in 1920, reads as follows:

> "Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided,* such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in Section 4529 of the Revised Statutes: *Provided further,* That notwithstanding any release signed by any seaman under Section 4552 of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take

such action as justice shall require: *And provided further,* That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement" (41 Stat. 1006).

CONCLUSION.

It is respectfully submitted that the decree of the Circuit Court should be reversed.

Respectfully submitted,

SILAS B. AXTELL,
Proctor for Appellants.

JOHN W. DAVIS,
Of Counsel.

FILE COPY

No. 923

Supreme Court of the United States

OCTOBER TERM, 1949

JOHN JAMES JACKSON, *et al.*,

Petitioners,

vs.

STRAUSSER ARCHBOLDS,
LAMPORT & HOLT LINE, LTD. (CORRECTED),

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

IVAN VICTOR WALTON,
WILLIAM J. DEANE,
Attorneys for Respondent.

The Lawyers Press, Inc., Printers, 115 Nassau St., New York 38, N. Y.

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SUPREME COURT OF THE UNITED STATES

JOHN JAMES JACKSON, *et al.*,
Petitioners,

AGAINST

Steamship "ARCHIMEDES",
LAMPORT & HOLT LINE, LTD. (Claimant),
Respondent.

October Term, 1926.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT

The petitioners, British seamen from a British steamer, urge an interpretation of Section 32 of the Jones Merchant Marine Act of 1920 (41 Stat. 1007) which would enable them to disregard advances of wages received on joining the steamer at Manchester, England, which are sanctioned by British law.

A similar case was presented in *Sandberg* v. *McDonald* (*The Talus*), 248 U. S. 185, decided before the enactment of the Jones Act, where this Court said:

"The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that such advancements shall in no cases, except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels 'while in waters of the United States'" (195).

Here was the restrictive language which it was necessary to change had Congress sought to extend the statute to foreign vessels outside the waters of the United States.

The Jones Act, however, did not change this language; but, in order to forbid advances by American vessels abroad, inserted in Section 10 (*a*) of the Dingley Act of June 26, 1884, as amended by Section 11 of the La Follette Act of March 4, 1915, the following italicized words:

"The payment of such advance wages or allotment *whether made within or without the United States or territory subject to the jurisdiction thereof,* shall in no case except as herein provided absolve the vessel or the master or owner thereof from the full payment of wages * * *."

It is upon this amendment that the petitioners rely. But the District Court held that the statute as amended did not apply to the payment of advances by a foreign ship in a foreign port.

"It is contended on behalf of libellants that the amendment of the former clause by the insertion of the words 'whether made within or without the United States or territory subject to the jurisdiction thereof' shows that Congress intended to forbid advances by foreign vessels in foreign ports. But the later clause (*e*) providing that: 'This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States' was in the section before amendment and remained after amendment. The words 'as well to foreign vessels while in the waters of the United States as to vessels of the United States' have no qualifying meaning if the section has the same bearing on foreign as on American vessels. It seems more logical to suppose that the words 'whether made within or without the United States' were inserted in order to prohibit advances to seamen on American vessels, though made in foreign ports, and to avoid the effect of the decision of the Supreme Court in *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205, which held such advances permissible" (Record, pp. 81-82).

This decision was affirmed *per curiam* by the Circuit Court of Appeals for the Second Circuit.

FIRST POINT

THE JONES ACT DOES NOT INVALIDATE PAYMENT OF ADVANCE WAGES TO SEAMEN BY FOREIGN VESSELS IN FOREIGN PORTS.

The legislative and judicial history of the statute in question affords ample guidance to its meaning.

The original statutory prohibition of advances of wages to seamen embodied in Sec. 10 of the Dingley Act of June 26, 1884, was held by Judge Addison Brown to be inapplicable to the shipment of seamen in foreign ports by an American vessel. *The State of Maine*, 22 Fed. 734.

"Every presumption," said Judge Brown, "is against the supposition that Congress had any intention to legislate in reference to acts done and completed wholly beyond its jurisdiction. And while Congress might, perhaps, subject the masters of American vessels, upon their return to this country, to punishment for acts done on foreign soil, though such acts were lawful there, still, such an intention would not be presumed, nor is such an intention sufficiently indicated by mere general language that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States."

The provision that the act "shall apply as well to foreign vessels as to vessels of the United States", was held by this Court to make it applicable to foreign vessels in American ports. *The Eudora*, 190 U. S. 169.

The Dingley Act was amended by Sec. 11 of the LaFollette Act of March 4, 1915. As amended, Par. (*a*) repeated the provision of the prior act that

"The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages * * *."

And the reference to foreign vessels was amplified as follows:

"(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

Thus amended the statute was held by the Circuit Court of Appeals for the Second Circuit to be inapplicable to advances made in a foreign port by American vessels. *The Windrush* and *The Rhine,* 250 Fed. 180. Judge Hough said:

"This is an amendment to existing law, and the presumption is that the same words used therein have the meaning acquired by prior judicial construction. *United States* v. *Trans-Missouri Ass'n,* 58 Fed. 67, 7 C. C. A. 15, 24 L. R. A. 73. * * * The remedial and penal portions of the part of the statute under consideration cannot be separated; if what these shipmasters did in Buenos Ayres was not lawful, it was unlawful, and a misdemeanor was committed. If it be possible now and in this country to enact a law making a crime of something done by an American citizen in a foreign land (*Rex* v. *Sawyer,* 1 C. & K. 101), every and the strongest presumption is against such construction (*American, etc. Co.* v. *United Fruit Co.,* 213 U. S. 347, 29 Sup. Ct. 511, 53 L. Ed. 826, 16 Ann. Cas. 1047). The absurdity of considering the ship captains indictable is not denied; therefore the contention becomes this: That this executed contract must be set aside, because the statute in effect declares it repugnant to the 'policy and morality' of the people of the United States. We discover no consensus on this point of morals in the written law; there is no evidence on the subject, and the rule appealed to ordinarily affects only executory

contracts. The situation here is this: Libelants demand a part of their wages in accordance with the law of the United States; respondents answer, We paid you that part in Argentine in accordance with the law of that country; libelants reply, The law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain, unquestioned legislative order; and such order cannot be discovered in this statute."

That decision was affirmed by this Court. *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205. At the same term this Court held that the statute did not apply to advances made abroad by foreign vessels pursuant to contracts valid where made. *Sandberg* v. *McDonald* (*The Talus*), 248 U. S. 185. Mr. Justice Day said there was nothing in the language of the statute to indicate an intention to control such matters beyond waters of the United States.

"Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357. In *Patterson* v. *Bark Eudora*, *supra*, this court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports.

In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish

criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress. *United States* v. *Freeman*, 239 U. S. 117, 120. The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States" (pp. 195-6).

In *Strathearn Steamship Company* v. *Dillon*, 252 U. S. 348, which involved a claim for half wages under Sec. 4 of this act, this Court said:

"In the case of *Sandberg* v. *McDonald*, 248 U. S. *supra*, we found no purpose manifested by Congress in § 11 to interfere with wages advanced in foreign ports under contracts legal where made. That section dealt with advancements, and contained no provision such as we find in § 4. Under § 4 all contracts are avoided which run counter to the purposes of the statute" (p. 355).

The exact words of Section 4, referred to above, were "all stipulations in the contract to the contrary shall be void." It was held that under this section there must be charged against the half wages earned and demanded by a seaman "all prior payments he has received." *The London*, 241 Fed. 863; *The Hougomont*, 272 Fed. 881.

The statute was further amended by the Jones Act of June 5, 1920, by the insertion in Par. (*a*) of the italicized words, quoted on page 2, *supra*.

Everything said by this Court in the *Talus* case, *supra*, applies with equal force to the present case. This is an amendment of existing law, the history of which has been traced. The plain and effective purpose of the addition of the words "whether made within or without the United States or territory subject to the jurisdiction thereof" in Par. (*a*) was to apply the statutory prohibition to advances made by American vessels in foreign ports. The remainder of the section being unchanged, the presumption is that it

has the meaning acquired by prior judicial construction. Par. (*e*) continued, without change, to limit the application of the section to foreign vessels "while in waters of the United States." The express language of the act is reinforced by every presumption. The remedial and penal provisions of the section cannot be separated, and it is not to be supposed that Congress intended to punish criminally acts done by an alien in his own country and valid there. Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. No public policy sanctions a refusal to recognize such a lawful and completed transaction. For so extreme a doctrine as the appellants contend, support must be found, as Judge Hough said in the *Windrush* case, "only in plain, unquestioned legislative order; and such an order cannot be discovered in this statute."

In the *Talus* case this Court pointed out the change required to make the prohibition applicable to foreign vessels abroad. Mr. Justice Day said that "had Congress intended to make void such contracts and payments, a few words would have stated that intention, not leaving such an important regulation to be gathered from implication." In making the amendment of 1920, Congress did not adopt the Supreme Court's suggestion. The amendment says nothing about making such payments void, and any contention that Par. (*a*) is applicable to foreign vessels abroad still rests on implication. In fact, the amendment, being confined to Par. (*a*) and leaving unchanged Par. (*e*), on which the *Talus* decision is founded, confirms the prior interpretation, and makes it more apparent than before that the provision as to advances was not intended to apply to foreign vessels abroad.

The petitioners' attempt (Brief, pp. 12-13), to give inde-

pendent significance to Par. (*e*) of the Jones Act is wholly ineffective. It is useless to argue that the words "while in waters of the United States" were retained for the purpose of separating the remedial from the penal provisions. The remedial and penal provisions are inseparable. *The Windrush*, 250 Fed. 180, 183. Nor do the petitioners advance their argument by the further suggestion that while the remedial and penal provisions may be co-extensive with respect to American vessels, they are separable with respect to foreign vessels. For the *Talus* case involved advances by a foreign vessel in a foreign port, and it was held that the penal provision is as wide as the prohibition itself and covers every advance. 248 Fed. 670, 674; 248 U. S. 185, 186.

The Jones Act made no distinction between remedial and penal provisions. It merely inserted the words "whether made within or without the United States or territory subject to the jurisdiction thereof" after the words "The payment of such advance wages or allotment;" the word "such" referring to the advance wages forbidden and made criminally punishable by the two preceding sentences of Par. (*a*). The retention of the word "such", which joined the sentence in which the new words were interpolated to the preceding sentences, clearly shows that Congress intended to keep the remedial provisions co-extensive with the penal provisions. If Congress had intended to separate them, it would have eliminated at least the word "such". Instead of doing that, or removing the limitation in Par. (*e*), it merely added a clause which in the light of the other provisions of the section could apply only to acts done outside the United States by American vessels. The real distinction is not between remedial and penal provisions but between American and foreign vessels abroad.

The petitioners' resort (Brief, pp. 9-10), to Senator Jones's remarks when the amendment of 1920 was under consideration in the Senate is futile. He did not mention foreign vessels, nor would his personal views have any bearing upon the construction of the statute. This Court has held repeatedly that the debates in Congress are no guide to the meaning of statutes. *United States* v. *Freight Association*, 166 U. S. 290, 318; *Pennsylvania Railroad Co.* v. *International Coal Co.*, 230 U. S. 184, 198. In the former case this Court said:

"There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States* v. *Union Pacific Railroad Company*, 91 U. S. 72, 79; *Aldridge* v. *Williams*, 3 How. 9, 24, Taney, Chief Justice; *Mitchell* v. *Great Works Milling & Manufacturing Company*, 2 Story, 648, 653; *Queen* v. *Hertford College*, 3 Q. B. D. 693, 707. The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

The petitioners affect surprise that Congress by the Amendment of 1920 should have singled out for legislative change one decision of the Supreme Court, and ignored another decided the same day (Brief, p. 10). Congress indicated very clearly by its act that it designed to apply the prohibition of advances to American vessels both within and without the United States; but it is pure assumption on the part of the petitioners to suppose that Congress had any interest in applying the prohibition to advances made

abroad by foreign vessels. That Congress had no such intention, and was therefore not concerned with the judicial construction of the statute in the *Talus* case, is clearly indicated, as Judge Hand held, by the absence of any change in the terms of Par. (*c*), upon which that construction was based.

The supposed disadvantage to American vessels in engaging seamen in foreign ports, under the construction of the statute by the District Court, is theoretical and illusory. American vessels sail with full crews shipped for the voyage. Only on exceptional occasions, and in small numbers, are seamen shipped abroad. And to this extent there is no disadvantage or difficulty in view of the notoriously higher wages paid by American vessels.

SECOND POINT

THE PETITIONERS WERE NOT ENTITLED TO ANY WAGES UNDER REV. ST., SECTION 4530.

We have answered the petitioners' contention as made, but it is equally clear that they were not entitled to any wages under Rev. St., Sec. 4530. That section provides that the demand shall not be made "more than once in the same harbor on the same entry". The *Archimedes* arrived in New York on Thursday, June 1. On Saturday, June 3, all the petitioners drew advances. They marked on a list the amount desired, which they received (Record, fols. 134-135, 177-80; Wilson, fols. 50, 61-62, 67; Hooper, fols. 73, 82; Jackson, fols. 92, 104, 107; Shotton, fols. 114-115, 124-125; Lewis, fols. 135, 150). Although they did not formally demand half wages as such, they received the amount asked for. The

master of the vessel told them that "they could have any reasonable amount, so long as it was due them", but that they must take it all at one time (Record, fol. 178). Having drawn once they were not entitled under the statute to another payment five days later.

The demand for half wages on June 8 was in fact a mere pretext whereby these petitioners, who were dissatisfied with a new mate (Record, fols. 145-53, 159), sought to desert the vessel without forfeiting the balance of their wages.

CONCLUSION

IT IS RESPECTFULLY SUBMITTED THAT THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

New York, August 25, 1926.

VAN VECHTEN VEEDER,
WILLIAM J. DEAN,
Attorneys for Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 193

JOHN LAMBE JACKSON, *et al.*,

Petitioners,

vs.

STEAMSHIP "ARCHIBURN"; LAMPORT & HOLT LINE, LTD., Claimant,

Respondent.

BRIEF FOR RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BURLINGHAM, VEEDER, MASTEN & FERRETY,
Proctors for Respondent.

VAN VECHTEN VEEDER,
WILLIAM J. DEAN,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

JOHN JAMES JACKSON, *et al.*,
Petitioners-Libellants,

AGAINST

Steamship ARCHIMEDES,
LAMPORT & HOLT LINE, LTD.,
Respondent.

No. 108
October Term
1927

This is a writ of certiorari in review of the affirmance by the Circuit Court of Appeals for the Second Circuit of a decree of the District Court for the Southern District of New York dismissing the libel. The Circuit Court of Appeals affirmed on the opinion of District Judge Augustus N. Hand, which is printed at page sixty-two of the record and is reported 10 F. (2d) 234.

STATEMENT

The petitioners are five British seamen who sue the British steamship *Archimedes* for the recovery of wages and waiting time. They joined the *Archimedes*, May 19, 1922, at Manchester, England, for a round voyage to the United States, receiving as advance wages negotiable notes, four for £4 and one for £2. Such advances were sanctioned by British law. The steamer proceeded to New York, where the appellants demanded half wages under section 4530, U. S. Revised

Statues, at a time when no wages were due if the appellants were legally chargeable here with the advances received in England. Their demand having been refused, they quit the ship and brought this suit. They contend that the advances, although legal where received, were invalid here under section 11 of the Seamen's Act of 1915, as amended by section 32 of the Merchant Marine Act of 1920 (41 Stat. 1007).

ARGUMENT

FIRST POINT

SECTION 11 OF THE ACT OF MARCH 4, 1915, TO PROMOTE THE WELFARE OF AMERICAN SEAMEN IN THE MERCHANT MARINE OF THE UNITED STATES, AS AMENDED BY SECTION 32 OF THE MERCHANT MARINE ACT, 1920, DOES NOT INVALIDATE PAYMENT OF ADVANCES TO SEAMEN BY FOREIGN VESSELS IN FOREIGN PORTS.

The legislative and judicial history of this statute affords ample guidance to its meaning and application. For convenient reference the statute in its present form is printed in full at page 15, together with references to prior acts relating to advances and allotments.

(a) *Legislation prior to the Amendment of 1920.*

The original statutory prohibition of advances of wages to seamen embodied in Sec. 10 of the Act of June 26, 1884 (23 Stat. 55), was held by Judge Addison Brown to be inapplicable to the shipment of seamen in foreign ports by an American vessel. *The State of Maine,* 22 Fed. 734.

"Every presumption," said Judge Brown, "is against the supposition that Congress had any intention to legislate in reference to acts done and completed wholly beyond its juris-

diction. And while Congress might, perhaps, subject the masters of American vessels, upon their return to this country, to punishment for acts done on foreign soil, though such acts were lawful there, still, such an intention would not be presumed. Nor is such an intention sufficiently indicated by mere general language, that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States" (pp. 735-6).

The provision that the act "shall apply as well to foreign vessels as to vessels of the United States", was held by this Court to make it applicable to foreign vessels in American ports. *The Eudora,* 190 U. S. 169.

The statute was amended by Sec. 11 of the Seamen's Act of March 4, 1915 (38 Stat. 1168), where the section was enacted in its present form of five lettered paragraphs. As amended, Par. (*a*) repeated the provision of the prior act that

"The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages * * *."

And the reference to foreign vessels was amplified as follows:

"(*e*) This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

Thus amended the statute was held by the Circuit Court of Appeals for the Second Circuit to be inapplicable to ad-

vances made in a foreign port by American vessels. *The Windrush* and *The Rhine*, 250 Fed. 180. Judge Hough said:

"This is an amendment to existing law, and the presumption is that the same words used therein have the meaning acquired by prior judicial construction. *United States* v. *Trans-Missouri Ass'n*, 58 Fed. 67, 7 C. C. A. 15, 24 L. R. A. 73. * * * The remedial and penal portions of the part of the statute under consideration cannot be separated; if what these shipmasters did in Buenos Ayres was not lawful, it was unlawful, and a misdemeanor was committed. If it be possible now and in this country to enact a law making a crime of something done by an American citizen in a foreign land (*Rex* v. *Sawyer*, 1 C. & K. 101), every and the strongest presumption is against such construction (*American, etc. Co.* v. *United Fruit Co.*, 213 U. S. 347, 29 Sup. Ct. 511, 53 L. Ed. 826, 16 Ann. Cas. 1047). The absurdity of considering the ship captains indictable is not denied; therefore the contention becomes this: That this executed contract must be set aside, because the statute in effect declares it repugnant to the 'policy and morality' of the people of the United States. We discover no consensus on this point of morals in the written law, there is no evidence on the subject, and the rule appealed to ordinarily affects only executory contracts. The situation here is this: Libelants demand a part of their wages in accordance with the law of the United States; respondents answer, We paid you that part in Argentine in accordance with the law of that country; libelants reply, The law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain, unquestioned legislative order; and such order cannot be discovered in this statute" (p. 183).

That decision was affirmed by this Court. *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205. At the same term this Court held that the statute did not apply to advances made abroad by foreign vessels pursuant to contracts valid where made. *Sandberg* v. *McDonald* (*The Talus*), 248 U. S. 185.

Mr. Justice Day said there was nothing in the language of the statute to indicate an intention to control such matters otherwise than in the ports of the United States.

"The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that

such advancements shall in no cases, except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels 'while in waters of the United States.'

Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 357. In *Patterson* v. *Bark Eudora, supra*, this court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports.

In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress. *United States* v. *Freeman*, 239 U. S. 117, 120. The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States" (pp. 195-6).

In *Strathearn Steamship Company* v. *Dillon*, 252 U. S. 348, which involved a claim for half wages under Sec. 4 of this act, this Court said:

"In the case of *Sandberg* v. *McDonald*, 248 U. S. *supra*, we found no purpose manifested by Congress in § 11 to inter-

fere with wages advanced in foreign ports under contracts legal where made. That section dealt with advancements, and contained no provision such as we find in § 4. Under § 4 all contracts are avoided which run counter to the purposes of the statute" (p. 355).

The exact words of Section 4, referred to above, were "all stipulations in the contract to the contrary shall be void."

(*b*) *The statute in issue, as amended June 5, 1920.*

The statute was further amended by Sec. 32 of the Merchant Marine Act, Act of 1920 (41 Stat. 1007), by the insertion in Par. (*a*) of the italicized words, which now reads:

"The payment of such advance wages or allotment *whether made within or without the United States or territory subject to the jurisdiction thereof,* shall in no case except as herein provided absolve the vessel or the master or owner thereof from the full payment of wages * * *"

It is upon this amendment that the petitioners rely. But Judge Hand held that the statute as amended did not apply to the payment of advances by a foreign ship in a foreign port.

"It is contended on behalf of libellants that the amendment of the former clause by the insertion of the words 'whether made within or without the United States or territory subject to the jurisdiction thereof,' shows that Congress intended to forbid advances by foreign vessels in foreign ports. But the later clause (*c*) providing that: 'This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States' was in the section before amendment and remained after amendment. The words 'as well to foreign vessels while in the waters of the United States as to vessels of the United States' have no qualifying meaning if the section has the same bearing on foreign as on American vessels. It seems more logical to suppose that the words 'whether made within or without the United States' were inserted in order to prohibit advances to seamen on American vessels, though made in for-

eign ports, and to avoid the effect of the decision of the Supreme Court in *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205, which held such advances permissible" (R. 64).

Everything said in the *Talus* and *Windrush* cases, as quoted above, applies with equal force to the present issue. This is an amendment to existing law, the history of which has been traced. The plain and effective purpose of the addition of the words "whether made within or without the United States or territory subject to the jurisdiction thereof" in Par. (*a*) was to apply the statutory prohibition to advances made by American vessels in foreign ports. The remainder of the section being unchanged, the presumption is that it has the meaning acquired by prior judicial construction. Par. (*a*) continued, without change, to limit the application of the section to foreign vessels "while in waters of the United States." The express language of the act is reinforced by every presumption. The remedial and penal provisions of the section cannot be separated, and it is not to be supposed that Congress intended to punish criminally acts done by an alien in his own country and valid there. Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. No public policy sanctions a refusal to recognize such a lawful and completed transaction. For so extreme a doctrine as the appellants contend, support must be found, as Judge Hough said in the *Windrush* case, "only in plain, unquestioned legislative order; and such an order cannot be discovered in this statute."

In the *Talus* case this Court pointed out the change required to make the prohibition applicable to foreign vessels abroad. Mr. Justice Day said that "had Congress intended to make void such contracts and payments, a few words

would have stated that intention, not leaving such an important regulation to be gathered from implication." In making the amendment of 1920, Congress did not adopt this Court's suggestion. The amendment says nothing about making such payments void, and any contention that subdivision (*a*) is applicable to foreign vessels abroad still rests on implication. In fact, the amendment, being confined to subdivision (*a*) and leaving unchanged subdivision (*c*), on which the *Talus* decision is founded, confirms the prior interpretation, and makes it more apparent than before that the provision as to advances was not intended to apply to foreign vessels abroad.

The petitioners' attempt to give independent significance to Par. (*c*) of the Jones Act is wholly ineffective. It is useless to argue that the words "while in waters of the United States" were retained for the purpose of separating the remedial from the penal provisions. It was expressly held in *The Windrush*, 250 Fed. 180, 183, that the remedial and penal provisions were inseparable. Nor do the appellants advance their argument by the further suggestion that while the remedial and penal provisions may be coextensive with respect to American vessels, they are separable with respect to foreign vessels. For the *Talus* case involved advances by a foreign vessel in a foreign port and it was held that the penal provision is as wide as the prohibition itself and covers every advance. 248 Fed. 670, 674; 248 U. S. 185, 186. *The Imberhorne*, 240 Fed. 830, was expresaly rejected in *The Windrush*, 250 Fed. 180.

The Jones Act made no distinction between remedial and penal provisions. It merely inserted the words "whether made within or without the United States or territory subject to the jurisdiction thereof" after the words "The payment of such advance wages or allotment," the word "such"

referring to the advance wages forbidden and made criminally punishable by the two preceding sections of subdivision (a). The retention of the word "such", which tied up the sentence in which the new words were interpolated to the preceding sentences, clearly shows that Congress intended to keep the remedial provisions co-extensive with the penal provisions. If Congress had intended to separate them, it would at least have eliminated the word "such". Instead of doing that, or removing the limitation in subdivision (c), Congress merely added a clause which in the light of the other provisions of the section could apply only to acts done outside the United States by American vessels. The real distinction is not between remedial and penal provisions but between American and foreign vessels abroad.

The petitioners' resort to Senator Jones's remarks when the amendment of 1920 was under consideration in the Senate is futile, because the Senator did not mention foreign vessels. His personal views would in no event have any bearing upon the construction of the statute.

The petitioners express surprise that Congress by the Amendment of 1920 should have singled out for legislative change one decision of the Supreme Court, and ignored another decided the same day. Congress indicated very clearly by its act that it designed to apply the prohibition of advances to American vessels both within and without the United States; but it is a pure assumption on the part of the petitioners to suppose that Congress had any interest in applying the prohibition to advances made abroad by foreign vessels. That Congress had no such intention, and was therefore not concerned with the judicial construction of the statute in the *Talus* case, is clearly indicated, as Judge Hand

held, by the absence of any change in the terms of Par. (e), upon which that construction was based.

The supposed disadvantage to American vessels in engaging seamen in foreign ports, under the construction of the statute by the District Court, is theoretical and illusory. American vessels sail with full crews shipped for the voyage. Only on exceptional occasions, and in small numbers, are seamen shipped abroad. And to this extent there is no disadvantage or difficulty in view of the notoriously higher wages paid by American vessels.

SECOND POINT

THE PETITIONERS WERE NOT ENTITLED TO ANY WAGES, UNDER SECTION 4530, REVISED STATUTES.

This section provides that demand for wages shall not be made more than once in the same harbor on the same entry:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall

be then due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: * * * And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." Rev. St., § 4530.

The *Archimedes* arrived in New York on Thursday, June 1. On Saturday, June 3, all the petitioners drew advances. They marked on a list the amount desired, which they received (R. 35, 36, 47-48; Wilson, R. 10-11, 13-14, 15; Hooper, R. 17, 20; Jackson, R. 23, 26, 27; Shotton, R. 29-30, 32-33; Lewis, R. 36, 40-41).

Although they did not formally demand half wages as such, they received the amounts asked for. The master of the vessel told them that "they could have any reasonable amount, so long as it was due them", but that they must take it all at one time (R. 48). Having drawn once they were not entitled under the statute to another payment five days later.

The demand for half wages on June 8 was in fact, as the District Judge intimated (R. 62), a mere pretext, whereby these petitioners, who were dissatisfied with a new mate (R. 39-41, 43), sought to desert the vessel without forfeiting the balance of their wages.

THIRD POINT

THE WAITING TIME PENALTY OF SECTION 4529, REVISED STATUTES, DOES NOT APPLY TO FOREIGN VESSELS, NOR TO PAYMENTS WITHHELD FOR SUFFICIENT CAUSE.

In no event would the petitioners be entitled to waiting time as claimed. Rev. St., § 4529, reads:

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages or from a port on the Atlantic to a port on the Pacific, or *vice versa*, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage."

Section 4530 expressly applies "to foreign vessels while they are in harbors of the United States." But section 4529 contains no such provision, nor does it mention "foreign vessels". It refers to two classes of vessels, those making coasting voyages and those making foreign voyages. The petitioners cite no case which has applied the waiting time penalty of section 4529 to foreign vessels. Section 4529

penalizes only for refusal or neglect to pay "without sufficient cause". No waiting time was allowed by the District Courts in *Neilson* v. *Rhine*, 244 Fed. 833, or in *The Talus*, 242 Fed. 954, which gave the seamen decrees for wages. In the case at bar the District Court held that no wages were due the appellants. There was sufficient cause for non-payment.

The provision in section 4530 that "when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4529 of the Revised Statutes" is to make the remaining half of his wages payable within the time fixed by section 4529. "When the voyage is ended" has been held to refer, not to the discharge of a particular cargo, but to the "completion of the voyage shipped for". *The Cubadist*, 256 Fed. 203, *certiorari* denied, 249 U. S. 618. There the Court analyzed both sections and pointed out that section 4529 "provides for the payment of the full wages due seamen", while section 4530 provides for "partial payments to be made during the progress of the voyage".

Section 4530 punishes the shipowner for failure to pay half wages by making him liable for the full wages earned and unpaid. Congress considered this a sufficient penalty and did not impose the further penalty of section 4529 except in respect of "the remainder of the wages due when the voyage is ended". Here the appellants did not stay on the ship until the completion of the voyage, but deserted, and thereby forfeited all wages due them. *The City of Norwich*, 279 Fed. 687.

LAST POINT

IT IS RESPECTFULLY SUBMITTED THAT THE DECREE BELOW SHOULD BE AFFIRMED.

BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Respondent.

VAN VECHTEN VEEDER
WILLIAM J. DEAN
Of Counsel.

Appendix

Act of March 4, 1915, To promote the welfare of American seaman, Section 11, as amended by the Merchant Marine Act, 1920, Section 32.

"Advances and allotments.—(*a*) It shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25. nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

(b) It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister, or children.

(c) No allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

(d) No allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

(e) This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation. The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted

any such vessel unless the provisions of this section have been complied with.

(*f*) Under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section. (June 26, 1884, c. 121, § 10, 23 Stat. 55; June 19, 1886, c. 421, § 3, 24 Stat. 80; Dec. 21, 1898, c. 28, § 24, 30 Stat. 763; Apr. 26, 1904, c. 1603, § 1, 33 Stat. 308; Mar. 4, 1915, c. 153, § 11, 38 Stat. 1168; June 5, 1920, c. 250, § 32, 41 Stat. 1006.)"

Code of the Laws of the United States, Title 46, Section 599, page 1515.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1927.

No. 103.

JOHN JAMES JACKSON, *et al.*,
Petitioners,

against

STEAMSHIP "ARCHIMEDES," LAMPORT & HOLT, LTD.,
Claimant.

Motion and Brief of Counsel for British Embassy as *Amici Curiae*.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for British Embassy,
Amici Curiae,
2 Rector Street,
New York.

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Motion of Counsel for the British Embassy for Leave to File Brief and Make Oral Argument as *Amici Curiae*.

Now come Frederic R. Coudert and Howard Thayer Kingsbury, Counsel for the British Embassy in the United States of America, and respectfully suggest and represent to the Court that the determination of the question involved in this cause is of great interest and importance to the British Government for the following reasons:

I.—That this cause involves the construction and effect of Sec. 32 of the Act of June 5th, 1920, commonly known as the "Jones Act" (amending Sec. 11 of the La Follette Act of 1915, which in turn amended Sec. 10

of the Dingley Act of 1884), as applied to the payment of advance wages to British seamen upon British vessels in British ports, pursuant to British contracts valid under British law and in accordance with the usual and customary British practice.

II.—That if said statute should be so construed as to invalidate such payments of advance wages, seamen upon British vessels, which enter American ports in large numbers, would be induced thereby to collect one-half of their wages then earned, without any deduction for such advance payments, and then to desert their vessels, thus delaying their return voyages and imposing great expense and inconvenience upon the owners of such vessels.

III.—That said statute, if so construed, would transcend the legislative powers of Congress and violate the Constitution of the United States.

IV.—That it has heretofore been held by this Court in *Sandberg* v. *McDonald*, 248 U. S. 185, at p. 195, and in *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205, at p. 213, that the amendment effected by Sec. 11 of the Act of 1915 should not be construed as prohibiting the payment of advance wages upon either a foreign or an American vessel in a foreign port and that it was held by the District Court and the Circuit Court of Appeals in this cause that the amendment of 1920 does not operate to prohibit the payment of advance wages on a foreign ship in a foreign port and that it is of great interest to the British Government that such decision be sustained and affirmed.

The undersigned were permitted to appear as *amici curiae* and file a brief upon the hearing of this cause

in the District Court and in the Circuit Court of Appeals, and Frederic R. Coudert was permitted to take part in the oral argument in the Circuit Court of Appeals.

Wherefore the undersigned respectfully pray that they may be permitted to appear in this cause as *amici curiae*, and file the brief which they tender herewith, and that one of them the said Howard Thayer Kingsbury, may be permitted to make oral argument (not exceeding fifteen minutes). The said Frederic R. Coudert being now abroad.

Respectfully submitted this 28th day of November, 1927.

FREDERIC R. COUDERT,
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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1927.

No. 103.

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Claimant.

Brief of Counsel for British Embassy as *Amici Curiae*.

Statement.

The nature of the case, the essential facts and the questions involved, are set forth so fully yet concisely in the opinion of Hon. Augustus N. Hand in the District Court (Rec., pp. 62-65) that it is unnecessary to repeat them here at length. The Circuit Court of Appeals affirmed the decree of the District Court upon this opinion (Rec., p. 67).

The question, briefly stated, is: Can a seaman on a British vessel, who has received an advance payment on account of wages in a British port, valid under British Law, lawfully require in an American port payment of

one-half of his wages earned to date without deduction of the advance payment.

For the convenience of the Court the full text of the Statutes in question will be quoted.

Sec. 10 of the Act of June 26, 1884 (23 Stat., pp. 53, 55), commonly known as the Dingley Act, first forbade advance payments, as follows:

> "SEC. 10. That it shall be, and is hereby, *made unlawful in any case to pay any seaman wages before leaving the port at which such seamen may be engaged in advance of the time when he has actually earned the same,* or to pay such advance wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen. Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than four times the amount of the wages so advanced or remuneration so paid and may be also imprisoned for a period not exceeding six months, at the discretion of the court. *The payment of such advance wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned,* and shall be no defense to a libel, suit, or action for the recovery of such wages: PROVIDED, That this section shall not apply to whaling-vessels: AND PROVIDED FURTHER, That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation. And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion

of the court. *This section shall apply as well to foreign vessels as to vessels of the United States;* and any foreign vessel the master, owner, consignee, or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States."

(Italics ours in this and subsequent quotations.)

Sec. 11 of the LaFollette Act of March 4th, 1915, (38 Stat., Part I, pp. 1168, 1169), amended Sec. 10 of the Dingley Act to read as follows:

"SEC. 10 (a). That it shall be, and is hereby, *made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same,* or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. *The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned,* and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more this six months or fined not more than $500.

(b) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister, or children.

(c) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

(d) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

(e) *That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States,* and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(f) That under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

The Jones Act of June 5th, 1920, (41 Stat., Part I, p. 1007), inserted in subd. (a) of Sec. 10 of the Act of 1884, as amended by the Act of 1915, the words printed in italics in the following quotation:

> "The payment of such advance wages or allotment, *whether made within or without the United States or territory subject to the jurisdiction thereof*, shall in no case except as herein provided absolve the vessel or the Master or owner thereof from the full payment of wages * * *."

Subd. (e) of Sec. 10, making it applicable to "foreign vessels *while in waters of the United States*" was left unchanged.

The petitioners contend that the 1920 amendment to Subd. (a), is not limited to American vessels, but applies to and forbids payments of advance wages on a *foreign* vessel in a foreign port and prevents the deduction of such advance payments in determining the amount of half wages collectible in an American port under Sec. 4 of the Act of 1915. The Courts below have correctly held to the contrary in this case.

These decisions are reported as *The Archimedes*, 10 Fed. (2d), 234, and *Jackson* v. *S. S. Archimedes*, 11 Fed. (2d), 1000.

BRIEF OF THE ARGUMENT.

I.—It was not the intention of Congress in the Act of 1920 to forbid advance payments on foreign vessels in foreign ports, permitted under the applicable foreign law, and the statute should not be so construed.

II.—The statute, if construed and applied in accordance with petitioners' contentions, would transcend the legislative powers of Congress and violate the Constitution of the United States.

III.—The application of the statute to advance payments on British ships in British ports would have a disastrous affect upon the commerce of a friendly foreign nation.

POINT I.

It was not the intention of Congress in the Act of 1920 to forbid advance payments on foreign vessels in foreign ports, permitted under the applicable foreign law, and the statute should not be so construed.

This proposition is demonstrated by the opinion below and by the history of the legislation and the prior judicial decisions upon it.

The Dingley Act of 1884 and the LaFollette Act of 1915 both made the prohibition of advance payments applicable to foreign vessels, but only while within the territorial jurisdiction of the United States (see *supra*, pp. 5, 6, 7). The addition by the LaFollette Act of the words "while in the waters of the United States" was evidently made for greater caution and certainty, and not to change the existing law, for it does not appear that it was ever even suggested that the Dingley Act applied to foreign vessels in foreign waters. In fact, it was held that it did not apply even to *American* vessels in foreign ports (See *The State of Maine*, 22 Fed. 734).

In *Sandberg* v. *McDonald*, (*The Talus*), 248 U. S. 185, at p. 195, this Court held that the prohibition of the La Follette Act did not apply to advance payments made to foreign seamen on a foreign vessel in a foreign port, and in *Neilson* v. *Rhine Shipping Co.* (*The Rhine*), 248 U. S. 205, at p. 213, decided at the same time, this Court laid down the same rule as to advance payments made upon an American vessel in a foreign port in order to

secure seamen. Attention is also invited to the opinion of the late Judge Hough in the Circuit Court of Appeals in the last mentioned case (See *The Windrush*, 250 Fed. 180).

The Jones Act of 1920 evidently intended to change the rule laid down in the *Rhine* case and to subject *American* vessels, wherever they might be, to the prohibition of advance payments, but the limitation of subd. (e) of Sec. 10, whereby the whole section is applied to foreign vessels only "while in the waters of the United States" was left undisturbed.

Contracts with foreign seamen on a foreign vessel in a foreign port are presumed to be valid under the foreign law, as was recently expressly held by the Circuit Court of Appeals in *Transportes Maritimos Do Estado* v. *Almeido*, 5 Fed. (2nd) 151, after remand from this Court (265 U. S. 104). An intention is not to be imputed to Congress to attempt to interfere with and undo a transaction lawful where made and wholly outside of the jurisdiction of the United States, unless the language of the statute admits of no other possible construction.

The statute under consideration not only invalidates the advance payments to which it applies, but declares them to be a misdemeanor, punishable by fine and imprisonment. It is inconceivable that Congress could have intended "to do anything so obviously futile as to denounce as criminal an act wholly done in a foreign country" (See *United States* v. *Freeman*, 239 U. S. 117 at p. 120).

The amendment of 1920 should therefore be construed as applying only to a subject within the power and jurisdiction of Congress, namely, the regulation of advance payments of wages on American vessels, which are subject to the law of the flag wherever they may be, whether in a foreign or a home port, or on the high

seas (See *United States* v. *Rodgers*, 150 U. S. 249 at p. 264).

That a statute should be so construed, if possible, as to bring it within rather than without the legislative power, to validate rather than invalidate it and to eliminate grave doubts of constitutionality, is a proposition so well established as not to require any extensive citation of authorities.

See

United States v. *Standard Brewery*, 251 U. S. 210, 220;

United States v. *Jin Fuey Moy*, 241 U. S. 394, 401;

American-La France Fire Engine Co. v. *Riordan*, 6 Fed. (2nd), 964, 968, (C. C. A. 2nd Circuit).

The proceedings in the Senate in connection with the legislation in question, referred to by petitioners (Petrs.' Brief, pp. 7-9), show that the specific question of the application of the amendment to advance payments on foreign ships in foreign ports was neither discussed nor considered. The contrary inference sought to be drawn by petitioners (Brief, p. 8) is strained and unconvincing. It cannot be assumed that the Senators were discussing the regulation of matters beyond American jurisdiction. It does not appear to have been even proposed to repeal or amend subd. (e) of Sec. 10, which made the whole section applicable to foreign vessels "while in waters of the United States." Under the rule of *expressio unius est exclusio alterius*, subd. (e) is a legislative recognition of the fact that Sec. 10 does not apply in whole or in part, to foreign vessels except "while in waters of the United States."

POINT II.

The statute, if construed and applied in accordance with petitioners' contentions, would transcend the legislative powers of Congress and violate the Constitution of the United States.

A construction of the amendment in question which would make it applicable to payments of advance wages on foreign ships in foreign ports would also make it violative of the Constitution of the United States, and beyond inherent legislative power. It is an elementary and fundamental principle of jurisprudence, not confined to nations having a legislature limited by a written Constitution, that "the laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens."

See

The Apolon, 9 Wheat. 362, at p. 370;
Moore's Int. Law Dig., Vol. 2, §197, p. 213 *et seq.*

In the case at bar the petitioners made in England valid contracts for a voyage to begin and end in the United Kingdom, and received advances, customary, lawful and valid under the *lex loci*, which was also the law of the nationality of the vessel and of the parties. By making these payments, the owners of the vessel acquired certain vested rights, both of contract and of property, of which they cannot be deprived by an American statute or an American Court without violating the Constitution of the United States.

A State statute having such effect would manifestly be unconstitutional as impairing the obligations of a contract (U. S. Const., Art 1, §10). While this pro-

vision does not specifically apply to federal legislation, this Court has held that although the United States

> "are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts," nevertheless "equally with the States they are prohibited from depriving persons or corporations of property without due process of law."

See

The Sinking Fund Cases, 99 U. S. 700, at pp. 718, 719.

To construe the statute in such a way as to deprive the owners of the benefit of advance payments, wholly lawful where made, would in effect confiscate such payments and give them to the petitioners without consideration, thus depriving the owners of their "property without due process of law" in violation of the Fifth Amendment.

Legislation which attempts to take away a vested right under a contract not only impairs the obligations of the contract but is equivalent to a deprivation of property.

See

Houston & Texas Central Railway v. *Texas*, 170 U. S. 243, 261.

Angle v. *Chicago, St. Paul &c. Railway*, 151 U. S. 1, 19.

The provision of the LaFollette Act of 1915 which was sustained by this Court in *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348, to some extent interferes with the obligation of contracts, by requiring payment of half wages on foreign vessels in American ports in spite of

stipulations in the original contracts of employment authorizing the withholding of payment until the end of the voyage, but it does not take away from the ship owner the benefit of payments already actually made and thus deprive him of property. It accelerates the time of a payment which he is eventually bound to make but it does not increase the total of his pecuniary obligation or liability. It thus goes to the remedy and to the time and manner of performance rather than to the substance of the right itself and in this view is less obnoxious to the limitations of the Constitution than if it took away an ultimate right of property (See *Conley* v. *Barton*, 260 U. S. 677, 681). It is remedial, rather than penal, within the classification stressed by petitioners (Brief, pp. 13, 14).

The provision for the payment of half wages was recognized by this Court to be an extreme exercise of local jurisdiction over foreign vessels (see opinion in *Strathearn* case at p. 355). Petitioners now seek to have the Act further extended by judicial construction of another provision, which does not clearly indicate such intention on the part of Congress.

There is nothing in the Amendment of 1920 which expressly or by implication makes compliance with its provisions by foreign vessels in foreign ports a condition precedent to their entry into American ports.

In the *Strathearn* case it was apparently considered that, by entering American ports after the passage of the statute then in question, foreign vessels thereby consented to the exercise by their seamen of the remedy in the American courts offered by the "half-wages" provision, and that such tacit consent was thereby made a condition of their entry. In other words, by such entry they waived certain executory provisions of their contracts with the seamen.

But requiring the waiver of an executory provision is a very different thing from undoing an executed transaction, and thus taking money from the pocket of one party and putting it into the pocket of another.

In a case such as this, where the advances amounted to more than one-half of the wages earned at the time of arrival in an American port, the construction of the Statute for which the petitioners contend would in effect subject the owners to a fine for coming into the port, and to a still greater fine in the event of a refusal to comply with the demand for half wages without deduction. This would be penal in substance, whether or not remedial in form and whether the fine be paid to the seamen or to the Government.

In the case at bar, to the extent that the petitioners' earned wages balanced the advance payments, the contract had been lawfully performed on both sides prior to entering American waters. By asking to have the deductions for advances disallowed, petitioners seek to be paid twice for the same work and to be paid a total greater than they have earned. A construction of the law which permits this would confiscate the lawful advance payments and give them to petitioners, contrary to the safeguards of the Constitution.

The case of *The Imberhorne*, 240 Fed. 830, cited by petitioners (Brief, p. 12), was expressly disapproved by the Circuit Court of Appeals in *The Windrush*, 250 Fed. 180 (cited *supra* p. 10), affirmed 248 U. S. 205.

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POINT III.

The application of the statute to advance payments on British ships in British ports would have a disastrous effect upon the commerce of a friendly foreign nation.

The especial interest of the British Government is in this phase of the question. The great extent of maritime commerce by British vessels between Great Britain and this country is a matter of common knowledge. The payment of advance wages on British vessels in British ports is so well established a custom that it is in effect a necessary prerequisite to the engagement of a crew.

Congressional interference with foreign shipping went far when the right to demand and collect half wages was extended to seamen on foreign vessels in American ports. If such seamen are now to be permitted to collect half wages without any deduction for advances lawfully made abroad, or, in the event of refusal, to terminate their contracts and collect full wages, also without deduction, it will be a standing invitation to all foreign seamen to collect half wages by voluntary payment or full wages by suit and then desert their ships and leave them stripped of their crews, thus delaying them indefinitely until new crews can be procured.

A construction so adverse to the vital interests of a friendly nation should not be placed upon an American statute, especially where it is not required by the language of the Act and where the express purpose of the Act, as shown by its title, is "to promote the welfare of *American* seamen" (see 38 Stat. 1164).

Other nations may prefer to promote the welfare of their own seamen and shipping in other ways and they

should be permitted to do so, provided their methods and practices do not interfere with the peace and order of American ports.

No reported case other than the case at bar has been found in which the precise question here presented has been determined under the Act of 1920. Before that legislation it was well established that against the one-half wages earned, which the seaman may demand, "there must be charged *all* prior payments he has received."

See

The London, 241 Fed. 863, 865, Certiorari denied, 245 U. S. 652.
The Hougomont, 272 Fed. 881, 883.

If the claim to a different method of computation now asserted were sound, surely it would have been made and sustained before the expiration of more than seven years since the passage of the Act of 1920. British shipping interests have relied and were justified in relying upon this continued practical construction of the Act and it should not now be disturbed by a contrary judicial construction.

SUMMARY.

The Amendment of 1920 should not be so construed or applied as

(a) to go beyond the apparent intention of Congress;

(b) to transcend the legislative jurisdiction of the United States;

(c) to violate the Constitution of the United States;

(d) to deprive foreign shipowners of property or contract rights;

(e) to do injury to the commerce of a friendly foreign nation.

The construction contended for by the petitioners would do all of these things and the Courts below correctly decided against it.

CONCLUSION.

The Decree of the Circuit Court of Appeals should be affirmed.

Respectfully submitted this 28th day of November, 1927.

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SUPREME COURT OF THE UNITED STATES.

No. 103.—October Term, 1927.

John James Jackson, William A. Wilson, Christopher R. Shotton, et al., Petitioners,
vs.
Steamship "Archimedes," Lamport & Holt Line, Ltd., Claimant.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 3, 1923.]

Mr. Justice Sanford delivered the opinion of the Court.

This case presents the question whether § 10 of the Dingley Act of 1884,[1] as amended by the Seamen's Act of 1915[2] and the Merchant Marine Act of 1920,[3] applies to the payment of advance wages to seamen on a foreign vessel in a foreign port.

The petitioners are British seamen, who shipped at Manchester, England, in May, 1922, on the *Archimedes*, a British vessel, for a round trip voyage to New York and return. When they signed the shipping articles they received advances on account of wages, which were customary and sanctioned by the British law. On June 1, the vessel arrived in New York. On June 3, they applied for and received from the master further payments on account of wages which, with the advances made in England, exceeded one-half of the wages then earned and unpaid. On June 8, while still in port, they made a formal demand upon the master for one-half of the wages then earned and unpaid, disregarding the advances made in England. This having been refused, they left the vessel and filed this libel in the District Court, claiming that under R. S. § 4530[4] they were entitled to the full wages earned at

[1] 23 Stat. 53, c. 121.
[2] 38 Stat. 1164, c. 153.
[3] 41 Stat. 988, c. 250; U. S. C., Tit. 46, c. 24.
[4] This section was amended by § 31 of the Merchant Marine Act so as to read as follows: "Every seaman on a vessel of the United States shall be entitled

the time of the demand, without deducting the advances made in England, since these advances were invalidated by § 10 of the Dingley Act, as amended, and should be disregarded in computing the amount of wages due. On the hearing the court dismissed the libel on the ground that the Act does not prohibit advances to seamen on foreign vessels in foreign ports, and such advances cannot be treated as invalid and disregarded when wages are demanded in this country. 10 F. (2d) 234. This was affirmed by the Circuit Court of Appeals on the opinion of the District Judge. 11 F. (2d) 1000.

To understand rightly the effect of the amendment made by the Merchant Marine Act of 1920—the controlling question in this case—it is necessary to consider first the amendment previously made by the Seamen's Act of 1915 and the decisions by this Court in reference thereto.

By § 11 of the Seamen's Act, Section 10 of the Dingley Act was amended so as to read as follows:

"Sec. 10 (a). That it shall be . . . unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same. . . . Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine . . . and may also be imprisoned. . . . The payment of such advance wages . . . shall in no case except as herein provided absolve the vessel or the master . . . from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. . . .

"(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master . . . of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master

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to receive on demand from the master . . . one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel . . . shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. . . . *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

. . . of a vessel of the United States would be for similar violation. The master . . . of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

It was held by this Court in *Sandberg* v. *McDonald*, 248 U. S. 185, 195 (1918), that § 11 of the Seamen's Act did not render invalid the contracts of foreign seamen as to the advance payment of wages made by a foreign vessel in a foreign country in which the law sanctioned such contract and payment; and that when they made demand in this country for the payment of half wages, the master was entitled to deduct the advances made in the foreign country. In so holding, the Court said: "Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States. The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that such advancements shall in no cases, except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels 'while in waters of the United States.' Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. American Banana Co. *v.* United Fruit Co., 213 U. S. 347, 357. . . . We think that there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would

continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports. In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master . . . of any such vessel, who violates the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress. United States *v.* Freeman, 239 U. S. 117, 120. The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States."

On the same day, in *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205, it was likewise held, upon the same general considerations, that the Seamen's Act of 1915 did not make invalid advances that had been made to seamen by the master of an American vessel in a foreign port.

And later, in *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348, 355 (1920), in distinguishing § 4 of the Seamen's Act—which in express terms declared that contracts denying seamen the right to demand half of their earned wages at ports reached in the course of a voyage, should be void, and gave seamen on foreign vessels while in American harbors the right to enforce its provisions in the courts of the United States[5]—from § 11 of the Act dealing with advance wages, this Court said: "In the case of Sandberg *v.* McDonald . . . we found no purpose manifested by Congress in § 11 to interfere with wages advanced in foreign ports under contracts legal where made. That section dealt with advancements, and contained no provision such as we find in § 4. Under § 4 all contracts are avoided which run counter to the purposes of the statute. Whether consideration for contractual rights under engagements legally made in foreign countries would sug-

[5]The provisions in § 4 of the Seamen's Act, which had amended R. S. § 4530, were the same in these respects as in the amendment made by the Merchant Marine Act which is set forth in Note 4, *supra*.

gest a different course is not our province to inquire. It is sufficient to say that Congress has otherwise declared by the positive terms of this enactment. . . ."

The libelants concede that under § 11 of the Seamen's Act, as interpreted by this Court in the *Sandberg* case, it would have been necessary to deduct the advances that had been made in England in computing the wages due them when the demand was made in this country, but insist that the law was thereafter changed in this respect by the amendment made by the Merchant Marine Act of 1920.

By § 32 of the Merchant Marine Act, Section 10 of the Dingley Act was further amended so as to make the third sentence of paragraph (a) dealing generally with advance payments, read as follows: "The payment of such advance wages . . , whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master . . . from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages." This amendment made no change in any other part of paragraph (a), or in paragraph (e) referring to foreign vessels, which remained in full force.

The libelants contend that in making this amendment Congress intended to meet the effect of the decisions in both the *Sandberg* and *Neilson* cases, and to extend the prohibition of advance wages to foreign vessels in foreign ports, as well as to American vessels in foreign ports.

We cannot sustain this contention. That this amendment expressed no intention to extend the provisions of the statute to advance payments made by foreign vessels while in foreign ports, is plain. This Court had pointed out in the *Sandberg* case that such a sweeping provision was not specifically made in the statute, and that had Congress so intended, "a few words would have stated that intention, not leaving such an important regulation to be gathered from implication." The amendment, nevertheless, not only contained no such specific statement, but made no reference whatever to foreign vessels;—left unchanged and in full force all of paragraph (e) which alone referred to foreign vessels, including the specific provision which, as held in the *Sandberg* case,

indicated that the prohibition of advance wages was intended to apply to foreign vessels only while in waters of the United States;—made no change in the criminal provisions which strengthened the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States;—and merely inserted the phrase "whether made within or without the United States or territory subject to the jurisdiction thereof" in paragraph (a) which made no reference to foreign vessels. This phrase, read in the light of the context, is given full effect when applied to American vessels; and thus construed is entirely consistent with the provision in paragraph (c) relating to foreign vessels while in American waters. In short, the language of the amendment indicates no intention to extend the prohibition of the statute to advance wages paid by foreign vessels while in foreign ports. Nor can such an intention be "gathered fro implication," or from anything in the legislative history of the amendment, in which no reference was made to foreign vessels.

The decree is

Affirmed.

A true copy.

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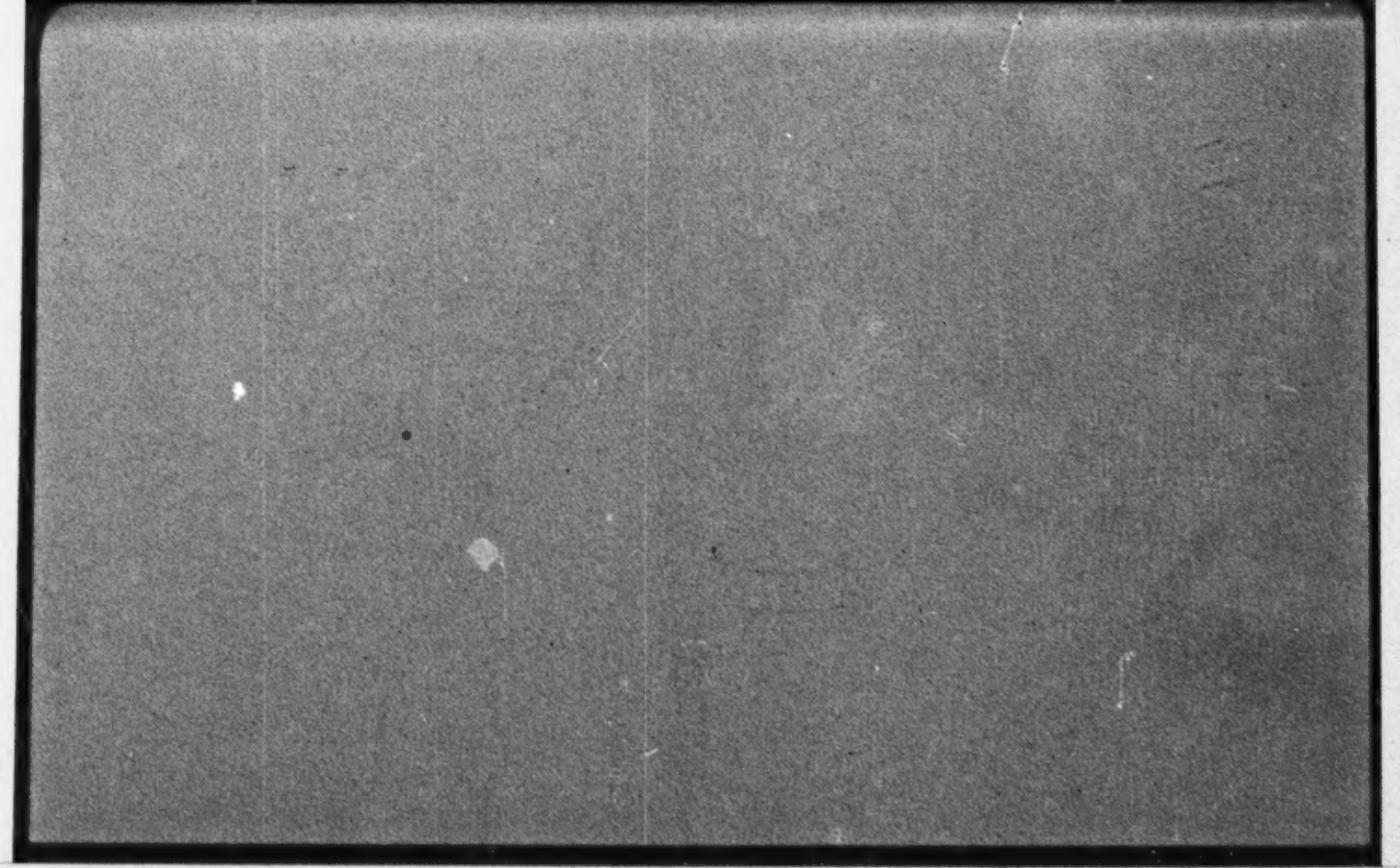
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